(37,323)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1932

No. 626

FIDELITY AND DEPOSIT COMPANY OF MARYLAND, PETITIONER,

vs.

GEORGE C. ARENZ.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

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[fols. a-1] [Caption omitted]

IN UNITED STATES DISTRICT COURT, DISTRICT OF OREGON

DEBTOR'S PETITION—B 16042

To the Honorable James A. Fee and John McNary, Judges of the District Court of the United States for the — Division, District of Oregon:

The petition of George C. Arenz, of Portland, in the County of Multnomah and District and State of Oregon [fol. 2] (state occupation), contractor respectfully represents:

That I had my principal place of business (or has resided or has had his domicile) — 693 Siskiyou Street, Portland, Oregon, for the greater portion of six months next immediately preceding the filing of this petition at the above address within said judicial District; that I owe debts which I am unable to pay in full; that I am willing to surrender all my property for the benefit of my creditors except such as is exempt by law, and desire to obtain the benefit of the Acts of Congress relating to Bankruptcy.

That the schedule hereto annexed, marked A [1, 2, 3, 4, 5] and verified by your petitioner's oath, contains a full and true statement of all my debts and (so far as it is possible to ascertain) the names and places of residence of my creditors and such further statements concerning said debts as are required by the provisions of said acts.

That the schedule hereto annexed, marked B [1, 2, 3, 4, 5, 6] and verified by your petitioner's oath, contains an accurate inventory of all my property, both real and personal, and such further statements concerning said property as are required by the provisions of said acts.

[That petitioner has not been granted a discharge in Bankruptcy within six years.]*

Wherefore your petitioner prays that I may be adjudged by the Court to be a bankrupt within the purview of said [fol. 3] acts.

Geo. C. Arenz, Petitioner. Arthur H. Lewis, Attorney for Petitioner, 414 Couch Building, Portland, Ore.

Duly sworn to by George C. Arenz. Jurat omitted in printing.

[*Stricken in copy.]

[fol. 4]

SCHEDULE A—Statement of All Debts of Bankrupt

SCHEDULE A-1

Statement of All Creditors Who Are to be Paid in Full or to Whom Priority is Secured by Law

Claims which have priority	Reference to ledger or voucher	Names of creditors	Residences. (If unknown, that fact must be stated.) Give street and number	Where and when contracted	Nature and consideration of the debt, and whether contracted as partner or joint contractor; and, if so, with whom	Amount
						$ Cts.
1 Taxes and debts due and owing to the United States						
2 Taxes due and owing to the State of Oregon Columbia County or to any county, district or municipality thereof		(Wendt's Island)		Approximately		200.00
3 Wages, due workmen, clerks, servants or traveling salesmen, to an amount not exceeding $300 each earned						

within three months before filing the petition.					
4 Other debts having priority by law					
				Total,	200.00

Geo. C. Arenz
Petitioner.

[fol. 5]

SCHEDULE A-2

Creditors Holding Securities

[N. B.—Particulars of securities held, with dates of same, and when they were given, to be stated under the names of the several creditors, and also particulars concerning each debt, as required by Acts of Congress relating to bankruptcy and whether contracted as partner or joint contractor with any other person, and if so, with whom.]

This schedule includes liens, pledges, mortgages, notes, etc.

Reference to ledger or voucher	Names of creditors	Residences. (If unknown that fact must be stated)	Description of securities	When and where debts were contracted	Value of securities		Amount of debts	
					$	Cts.	$	Cts.
	Oregon Contract Company,	516 Guaranty Building, Portland, Oregon	Overdraft for past years 124 shares capital stock of Oregon Contract Company, assigned June, 1930,		3,000	00	12,500	00
						Total,	12,500	00

Geo. C. Arenz
Petitioner.

[fol. 6]

SCHEDULE A-3

Creditors Whose Claims Are Unsecured

[N. B.—When the name and residence (or either) of any drawer, maker, indorser or holder of any bill or note, etc., are unknown, the fact must be stated, and also the name and residence of the last holder known to the debtor. The debt due to each creditor must be stated in full, and any claim by way of set-off stated in the schedule of property.]

Reference to ledger or voucher	Names of creditors	Residences. (If unknown, that fact must be stated)	Where and when contracted	Nature and consideration of the debt, and whether any judgment, bond, bill of exchange, promissory note, etc., and whether contracted as partner or joint contractor, with any other person, and if so, with whom.	Amount $ Cts.
	Oregon Contract Company	516 Guaranty Building Portland, Oregon		For rent of equipment year 1929	5,150.00
	Meier & Frank Co.	Portland, Oregon			495.00
	Lipman, Wolf & Co.	Portland, Oregon			45.00
	R. E. Hayward	302 Oak St. Portland, Oregon			60.00

[fol. 7]

Fidelity & Deposit Co. of Maryland, Failing Building, Portland, Oregon	Judgment dated 12/4/30 recorded in Docket 26 page 8.	10,000.00
Olds, Wortman & King 10th & Morrison Sts., Portland, Oregon		13.00
M. & H. H. Sichel 380 Washington St., Portland, Oregon		16.00
	Total,	$15,779.00

— Geo. C. Arenz
Petitioner.

SCHEDULE A–4

Liabilities on Notes or Bills Discounted Which Ought to Be Paid By Drawers, Makers, Acceptors, or Indorsers

[N. B.—The dates of the notes or bills, and when due, with the names, residences, and the business or occupation of the drawers, makers or acceptors thereof, are to be set forth under the names of the holders. If the names of the holders are not known, the name of the last holder known to the debtor shall be stated, and his business and place of residence. The same particulars as to notes or bills on which the debtor is liable as indorser.]

Reference to ledger or voucher	Names of holders as far as known	Residences. (If unknown, that fact must be stated)	Place where contracted	Nature of liability, whether same was contracted as partner or joint contractor, or with any other person; and if so, with whom.	Amount
					$ Cts.
				Total,	

Geo. C. Arenz
Petitioner

[fol. 8]

SCHEDULE A–5

Accommodation Paper

[N. B.—The dates of the notes or bills, and when due, with the names and residences of the drawers, makers and acceptors thereof, are to be set forth under the names of the holders; if the bankrupt be liable as drawer, maker, acceptor or endorser thereof, it is to be stated accordingly. If the names of the holders are not known, the name of the last holder known to the debtor should be stated, with his residence. Same particulars as to other commercial paper.]

Reference to ledger or voucher	Names of holders	Residences. (If unknown, that fact must be stated)	Names and residences of persons accommodated	Place where contracted	Whether liability was contracted as partner or joint contractor, or with any other person; and if so, with whom.	Amount $ Cts.
					Total,	

Geo. C. Arenz

Petitioner.

[fol. 9] Oath to Schedule A

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE — DIVISION, DISTRICT OF OREGON

In Bankruptcy. No. —

In the Matter of GEORGE C. ARENZ

UNITED STATES OF AMERICA,
District of Oregon,
County of Multnomah, ss:

On this 2nd day of May A. D. 1931, before me personally came George C. Arenz, the person mentioned in and who subscribed to the foregoing Schedule (marked A 1, 2, 3, 4, 5), and who, being by me first duly sworn, did declare the said Schedule to be a statement of all his debts, in accordance with the Acts of Congress relating to Bankruptcy.

Geo. C. Arenz.

Subscribed and sworn to before me this 2nd day of May A. D. 1931. My commission expires May 25, 1934. Andrew T. Lewis, Notary Public for Oregon. (Seal.)

[fol. 10]

SCHEDULE B—Statement of All Property of Bankrupt

SCHEDULE B–I

Real Estate

Location and description of all real estate owned by debtor, or held by him	Incumbrances thereon, if any, and dates thereof	Statement of particulars relating thereto	Estimated value
			$ Cts.
Lot Ten (10), Block Thirty (30), Irvington, in the City of Portland, Multnomah County, Oregon,	Mortgage $3,750.00	Held by an estate of entirety with Hazel Arenz, wife of bankrupt.	7,500.00
		Less mortgage,	3,750.00
			3,750.00
		Bankrupt's undivided one-half,	1,875.00
An undivided one-third interest in Lot 11, Section 4, Township 3 North, Range 1, West of the Willamette Meridian, known as Wendt's Island,			300.00
		Total,	$2,175.00

Geo. C. Arenz

Petitioner.

[fol. 11]

SCHEDULE B–2

Personal Property

		$	Cts.
A. Cash on hand.	None		
B. Bills of exchange, promissory notes, or securities of any description (each to be set out separately).			
C. Stock in trade in ..... business of ..... at ..... of the value of			
D. Household goods and furniture, household stores, wearing apparel, and ornaments of the person, viz.:			
E. Books, prints and pictures, viz.:			
F. Horses, cows, sheep, and other animals, (with number of each) viz.:			
G. Carriages and other vehicles viz.:			
H. Farming stock and implements of husbandry viz.:			
I. Shipping and shares in vessels, viz.:			

[fol. 12]

Personal Property

		$	Cts.
K. Machinery, fixtures, apparatus, and tools used in business with the place where each is situated, viz.:			
L. Patents, copyrights and trade marks, viz.:			
M. Goods or personal property of any other description, with the place where each is situated, viz.:	Membership or loan certificate in Columbia Country Club, Portland, Oregon.		100.00
		Total,	100.00

Geo. C. Arenz
Petitioner.

SCHEDULE B-3

Choses in Action

		$	Cts.
A. Debts due petitioner on open account.			
B. Stock in incorporated companies, interest in joint stock companies, and negotiable bonds.			
C. Policies of insurance. (Surrender value only.)	New York Life Insurance Co., for $5000.00 against which is borrowed $1000.00, Surrender value,		?

[fol. 13]

D. Unliquidated claims of every nature with their estimated value.

E. Deposits of money in banking institutions and elsewhere.

Total, ?

Geo. C. Arenz
Petitioner.

SCHEDULE B–4

Property in Reversion, Remainder or Expectancy, Including Property Held in Trust for the Debtor or Subject to Any Power or Right to Dispose of or to Charge.

[N. B.—A particular description of each interest must be entered. If all or any of the debtor's property has been conveyed by deed of assignment, or otherwise, for the benefit of creditors, the date of such deed should be stated, the name and address of the persons to whom the property was conveyed, the amount realized from the proceeds thereof, and the disposal of the same, so far as known to the debtor.]

General interest	Particular description	Supposed value of my interest
		$ Cts.
Interest in land.		
Personal property.		
Property in money, stocks, shares, bonds, annuities, etc.	[none]*	
Rights and powers, legacies and bequests.	[none]*	
Property heretofore conveyed for benefit of creditors.	[none]*	
	Total	

[*Stricken in copy.]

[fol. 14]

		Amount realized from proceeds of property conveyed $ Cts.
What portion of debtor's property has been conveyed by deed of assignment or otherwise for benefit of creditors; date of such deed, name and address of party to whom conveyed; amount [none]* realized therefrom, and disposal of same, so far as known to debtor.		
What sum or sums have been paid to counsel, and to whom, for services rendered or to be rendered in this bankruptcy.	For filing fees	40.00
	Total,	40.00

[*Stricken in copy.]

Geo. C. Arenz
Petitioner.

SCHEDULE B-5

A Particular Statement of the property claimed as exempted from the operation of the Acts of Congress relating to bankruptcy, giving each item of property, and its valuation, and, if any portion of it is real estate, its location, description and present use.

[fol. 15]		Valuation
		$ Cts.
Military uniform, arms and equipment.		
Property claimed to be exempted by State laws; its valuation; whether real or personal; its description and present use; and reference given to the statute of the State creating the exemption.	Lot Ten (10), Block Thirty (30), Irvington, in the City of Portland, Multnomah County, Oregon. (Home of bankrupt and his family)	$1,875.00
(See State Law)	See. 3-208, Oregon Laws	
	Total,	1,875.00

Geo. C. Arenz
Petitioner.

SCHEDULE B-6

Books, Papers, Deeds, and Writings Relating to Bankrupt's Business and Estate

The following is a true list of all books, papers, deeds, and writings relating to my trade, business, dealings, estate, and effects, or any part thereof, which, at the date of this petition, are in my possession or under my custody and control, or which are in the possession or custody of any person in trust for me, or for my use, benefit or advantage; and also of all others which may have been heretofore, at any time, in my possession, or under my custody or control, and which are now held by the parties whose names are hereinafter set forth, with the reasons for their custody of the same.

Books.	[none.]*
Deeds.	[none.]*
Papers.	[none.]*

Geo. C. Arenz
Petitioner.

[* Stricken in copy.]

[fol. 16] Oath to Schedule B

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE — DISTRICT OF OREGON, — DIVISION

In Bankruptcy. No. —

In the Matter of GEORGE C. ARENZ

UNITED STATES OF AMERICA,
District of Oregon,
County of Multnomah, ss:

On this 2nd day of May A. D. 1931, before me personally came George C. Arenz the person mentioned in and who subscribed to the foregoing Schedule (marked B 1, 2, 3, 4, 5, 6), and who, being by me first duly sworn, did declare the said Schedule to be a statement of all his Estate, both real and personal, in accordance with the Acts of Congress relating to Bankruptcy.

Geo. C. Arenz.

Subscribed and sworn to before me this 2nd day of May, A. D. 1931. My commission expires May 25, 1934. Andrew T. Lewis, Notary Public for Oregon. (Seal.)

[fol. 17] Summary of Debts and Assets

[From the Statement of the Bankrupt in Schedules A and B]

Schedule A—1 (1)	Taxes and Debts due the United States	
Schedule A—1 (2)	Taxes due States, Counties, Districts and Municipalities	$200.00
Schedule A—1 (3)	Wages	
Schedule A—1 (4)	Other debts preferred by law	
Schedule A—2	Secured Claims	12,500.00
Schedule A—3	Unsecured Claims	15,779.00
Schedule A—4	Notes and Bills which ought to be paid by other parties thereto	
Schedule A—5	Accommodation Paper	
	Schedule A, Total	28,479.00
Schedule B—1	Real Estate	2,175.00
Schedule B—2-a	Cash on Hand	
Schedule B—2-b	Bills, Promissory Notes, and Securities	
Schedule B—2-c	Stock in Trade	
Schedule B—2-d	Household Goods, etc.	
Schedule B—2-e	Books, Prints and Pictures	
Schedule B—2-f	Horses, Cows and other Animals	
Schedule B—2-g	Carriages and other Vehicles	
Schedule B—2-h	Farming Stock and Implements	

[fol. 18]

Schedule B—2-i	Shipping and Shares in Vessels	
Schedule B—2-k	Machinery, Tools, etc.	
Schedule B—2-l	Patents, Copyrights, and Trade-Marks	
Schedule B—2-m	Other Personal Property	100.00
Schedule B—3-a	Debts due on Open Accounts	
Schedule B—3-b	Stocks, Negotiable Bonds, etc.	
Schedule B—3-c	Policies of Insurance (Surrender Value Only) unknown	?
Schedule B—3-d	Unliquidated Claims	
Schedule B—3-e	Deposits of Money in banks and elsewhere	
Schedule B—4	Property in Reversion, Remainder, Trust, etc.	
Schedule B—5	Property claimed to be exempted. $	
Schedule B—6	Books, Deeds and Papers:	
	Schedule B, Total	

Geo. C. Arenz, Petitioner.

Filed May 4, 1931, at 12 o'clock M. G. H. Marsh, Clerk.

[fol. 19] IN UNITED STATES DISTRICT COURT

In Bankruptcy. No. B 16042

In the Matter of GEORGE C. ARENZ, Bankrupt

ADJUDICATION OF BANKRUPTCY AND ORDER OF REFERENCE—Filed May 4, 1931

At Portland, in said District, on the 4th day of May, A. D. 1931, before me the Honorable John H. McNary, Judge of said Court in Bankruptcy, the petition of George C. Arenz, that he be adjudged a bankrupt, within the true intent and meaning of the Acts of Congress relating to bankruptcy, having been heard and duly considered, the said George C. Arenz is hereby declared and adjudged a bankrupt accordingly.

It is therefore ordered that upon the petition filed in this Court by or against said bankrupt on the 4th day of May, A. D. 1931, said matter be referred to A. M. Cannon, one of the Referees in Bankruptcy of this Court, to take such further proceedings therein as are required by said Acts; and that the said George C. Arenz shall attend before said Referee on the 20th day of May, 1931, at Portland, and thenceforth shall submit to such orders as may be made by said Referee or by this Court relating to said bankruptcy.

[fol. 20] Witness the Honorable John H. McNary, Judge of the said Court, and the seal thereof, at Portland, in said District, on the 4th day of May, A. D. 1931.

G. H. Marsh, Clerk, by L. S. Rogers, Deputy Clerk.

(Seal of the Court.)

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

In Bankruptcy. No. B 16042

In the Matter of GEORGE C. ARENZ, Bankrupt

BANKRUPT'S PETITION FOR DISCHARGE—Filed July 20, 1931

To the Honorable James A. Fee and John McNary, Judge of the District Court of the United States for the District of Oregon, — Division:

George C. Arenz, of Portland, in the County of Multnomah and State of Oregon, in said District, respectfully represents:

That on the — day of May, last past, he was duly adjudged bankrupt under the Acts of Congress relating to bankruptcy; that he has duly surrendered all his property and rights of property, and has fully complied with all the [fol. 21] requirements of said Acts and of the orders of the court touching his bankruptcy.

Wherefore he prays that he may be decreed by the court to have a full discharge from all debts provable against his estate under said Bankrupt Acts, except such debts as are excepted by law from such discharge.

Dated this 18th day of July A. D. 1931.

Geo. C. Arenz, Bankrupt.

Duly sworn to by George C. Arenz. Jurat omitted in printing.

[File endorsement omitted.]

[fol. 22] IN UNITED STATES DISTRICT COURT

In Bankruptcy. No. 16042

In the Matter of GEORGE C. ARENZ, Bankrupt

PROOF OF DEBT—Filed July 17, 1931

At Portland, in the District of Oregon, on May 26th, A. D. 1931, came Clarence D. Porter in said District of Oregon, and made oath and says:

Corporation

That he is Manager of Fidelity and Deposit Company of Maryland, a corporation incorporated by and under the laws of the State of Maryland and carrying on business at Portland, County of Multnomah, State of Oregon, and that he is duly authorized to make this Proof of Claim and Power of Attorney; that there is no officer of said corporation present within the District of Oregon to make this proof of claim.

Partnership

That he is a member of the firm of —— ——, a corpartnership, consisting of himself and —— ——, and carrying on business at ——, County of ——, State of ——.

That the above named bankrupt, the person by whom a petition for adjudication of bankruptcy has been filed, was [fol. 23] at and before the filing of said petition and still is justly and truly indebted to said Fidelity and Deposit Company of Maryland, in sum of Ten Thousand and 00/100 ($10,000.00) Dollars.

That the nature and consideration of said debt is as follows:

Judgment rendered in the Circuit Court of the State of Oregon for Multnomah County upon the 4th day of December, 1930, in favor of the Oregon City Sand and Gravel Company against the bankrupt, and assigned to the Fidelity and Deposit Company of Maryland.

Sign individual name: Clarence D. Porter.

Subscribed and sworn to before me May 26th, 1931. Elnor Whitson, Notary Public. (Seal.) My commission expires Oct. 31, 1932.

Power of Attorney

To John Lichty:

The undersigned hereby authorizes you, or any of you, to attend the meeting or meetings of creditors of the bankrupt aforesaid at a Court of Bankruptcy, wherever advertised or directed to be holden, on the day and at the hour appointed and notified by said Court in said matter, or at such other time and place as may be appointed by the Court for holding such meeting or meetings, or at which meeting [fol. 24] or meetings or any adjournment or adjournments thereof may be held, and then and there from time to time, and as often as there may be occasion for and in the name of the undersigned to vote for or against any proposal or resolution that may be then submitted under the acts of Congress relating to bankruptcy; and in the choice of trustee or trustees of the estate of said bankrupt, and for the undersigned to assent to such appointment of trustee, and with like powers to attend and vote at any other meeting or meetings of creditors, or sitting or sittings of the Court, which may be held therein for any of the purposes aforesaid; also to accept any composition proposed by said bankrupt in satisfaction of his debts, and to receive payment of dividends and of money due the undersigned under any composition, and for any other purpose whatsoever in the interest of the undersigned, with full power of substitution, and the undersigned does hereby revoke any and all prior powers of attorney that may have been given by the undersigned in said matter. And does hereby irrevocably execute this power; and all powers of attorney hereafter executed shall be without effect and void.

In witness whereof the name and seal of the undersigned is hereby affixed May 26, A. D. 1931.

Signature of claimant, whether corporation: Fidelity and Deposit Company of Maryland, by Clarence D. Porter, Manager of said Corporation. (Seal.)

[fol. 25] Notarial Acknowledgment

UNITED STATES OF AMERICA,
District of Oregon, ss:

On May 26th, 1931, before me personally came Clarence D. Porter, to me known, and known to me to be Manager of

Fidelity and Deposit Company of Maryland, who being first duly sworn did say: that he is duly authorized to execute the foregoing Power of Attorney in behalf of said claimant and acknowledged that he executed the said Power of Attorney for and on behalf of said claimant, and the same to be his free act and deed and the free act and deed of claimant, and that he is duly authorized to act.

Subscribed and sworn to before me the day and year in this my certificate above written. My commission expires October 31, 1932. Elnor Whitson, Notary Public in and for the State of Oregon, County of Multnomah. (Seal.)

Filed July 10, 1931. A. M. Cannon, Referee.
Filed July 17th, 1931. G. H. Marsh, Clerk.

[fol. 26] IN UNITED STATES DISTRICT COURT

In Bankruptcy. No. B-16042

In the Matter of GEORGE C. ARENZ, Bankrupt

OBJECTIONS TO DISCHARGE OF BANKRUPT—Filed Aug. 21, 1931

Fidelity and Deposit Company of Maryland, of Baltimore, State of Maryland, a party interested in the estate of said George C. Arenz, bankrupt, does hereby oppose the granting to him of a discharge from his debts, and for the grounds of such opposition does file the following specifications:

I

That the bankrupt obtained money or property on credit upon a materially false statement in writing made by him to Fidelity and Deposit Company of Maryland for the purpose of obtaining credit from such person. That the said statement so made by the bankrupt was a financial statement made by him on or about the 15th day of May, 1929, as an inducement to secure the execution by the said Fidelity and Deposit Company of Maryland as surety of a bond of

the said George C. Arenz running to the State of Oregon in the sum of Seventy-one Thousand Three hundred Six and 25/100 ($71,306.25) Dollars, and which said statement did induce the execution of the said bond by the said Fidelity [fol. 27] and Deposit Company of Maryland on or about the 15th day of May, 1929, which said bond was also executed by the said bankrupt and principal and delivered to the State of Oregon on or about said date. That said statement was false in that the said bankrupt failed to list an indebtedness owed by him to the Oregon Contract Company, the amount of which said indebtedness is unknown to this creditor, or its agent signing this objection and specification, but which indebtedness this creditor is informed and believes was in an amount of approximately Ten Thousand ($10,000.00) Dollars. That the said financial statement was further false in that the bankrupt listed as owned by him one hundred twenty-five (125) shares of stock in the Oregon Contract Company of a value of Twelve Thousand Five Hundred ($12,500.00) Dollars, which said stock he therein stated was not pledged for any purpose, while in truth and in fact the said stock was, at said time, pledged to the Oregon Contract Company to secure it for the indebtedness of the bankrupt to the said Contract Company. That said financial statement was further false in that said bankrupt therein stated that he had never failed in business, nor compromised with creditors, when in truth and in fact he had, on several occasions, failed in business and voluntarily been adjudicated bankrupt. That said financial statement was further false in that the bankrupt therein stated that he had never defaulted on a contract, when in truth and in fact he had, upon several occasions, defaulted on contracts. That the said financial statement was further false in that the [fol. 28] bankrupt listed as an asset his home located at 693 Siskiyou Street, Portland, Oregon, which he represented had a forced sale value of Thirteen Thousand ($13,000.00) Dollars, when in truth and in fact said home had no greater or further forced sale value than the sum of Nine Thousand ($9,000.00) Dollars.

II

That the bankrupt has committed an offense punishable by imprisonment, as provided by the Act of July 1st, 1898, Chapter 541, Section 29; Title 11 United States Code, Sec-

tion 52, in that he made a false oath to schedule "B" of his schedules filed in this proceeding, in that he knowingly and fraudulently omitted to schedule in such schedule "B" 125 shares of the capital stock of Oregon Contract Company, a corporation, which said property was, at the time of the making of said schedule and at the time said schedule was sworn to, the property of the bankrupt.

Fidelity and Deposit Company of Maryland, Creditor, by R. E. Pinney, Resident Vice-President.
(Seal.) John Lichty, Attorney for Creditor.

[fol. 29] *Duly sworn to by R. E. Pinney. Jurat omitted in printing.*

STATE OF OREGON,
County of Multnomah, ss:

Due service of the within Objections to discharge of bankrupt is hereby accepted in Multnomah County, Oregon this 21st day of August, 1931 by receiving a copy thereof, duly certified to as such by John Lichty, Attorney for objecting creditor.

Arthur H. Lewis, of Attorney- for Bankrupt.

[File endorsement omitted.]

[fol. 30] IN UNITED STATES DISTRICT COURT

In Bankruptcy. No. B-16042

In the Matter of GEORGE C. ARENZ, Bankrupt

DEMURRER TO SPECIFICATION IN OPPOSITION TO DISCHARGE—
Filed Aug. 28, 1931

To the Hon. John McNary and James A. Fee, Judges of the United States District Court:

George C. Arenz, the bankrupt herein, appearing by Arthur H. Lewis, his attorney, demurs and excepts to the specifications of the ground in opposition to his discharge herein filed and demurs and excepts specifically to specifications I and II of said objections to his discharge filed by the

Fidelity and Deposit Company of Maryland on the ground and for the reasons that the same do not state facts sufficient to constitute a bar to the bankrupt's discharge.

Arthur H. Lewis, Attorneys for Bankrupt.

Dated this 28th day of August, 1931.

Due and legal service of the foregoing, by receipt of a duly certified copy thereof, as required by law, is hereby accepted in Multnomah County, Oregon, on this — day of August, 1931.

[fol. 31] John Lichty, Attorneys for Fidelity and Deposit Co. of Maryland.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

B-16042

In the Matter of GEORGE C. ARENZ, Bankrupt

RECORD OF HEARING ON DEMURRER—Filed December 14, 1931

This cause came on to be heard upon the demurrer of the said bankrupt to the objections to discharge filed by Fidelity & Deposit Company of Maryland, the bankrupt appearing by Mr. Arthur H. Lewis, of counsel, and the objecting creditor appearing by Mr. John Lichty, of counsel; whereupon the court having heard the argument of counsel, will advise thereof.

Witness the Honorable James Alger Fee, Judge of said Court, and the seal thereof, at Portland, in said district, this 14th day of December, 1931.

[fol. 32] G. R. Marsh, Clerk, by L. S. Rogers, Deputy. (Seal.)

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

In Bankruptcy. No. B-16042

In the Matter of GEORGE C. ARENZ, Bankrupt

ORDER SUSTAINING DEMURRER—Filed Jan. 27, 1932

A demurrer and exception having been made by the bankrupt herein to the specifications of the objections filed by

the Fidelity & Deposit Company of Baltimore, Maryland, in opposition to the bankrupt's discharge, and said demurrer and exceptions having come on for argument on the 14th day of December, 1931, and, after hearing argument of counsel, said bankrupt appearing by Arthur H. Lewis, and the said Fidelity & Deposit Company of Baltimore, Maryland, appearing by John Lichty, and due consideration having been had thereon,

Ordered that the said demurrer and exceptions be, and the same is, hereby sustained in all respects as to each specification of said objections, and it is

Further ordered that the said Fidelity & Deposit Com-
[fol. 33] pany of Baltimore, Maryland, have five days time within which to amend or file amended objections to said bankrupt's discharge.

James Alger Fee, United States District Judge.

Dated this 18th day of January, 1932.

Service of copy accepted this 26th day of January, 1932.
John Lichty, Attorney for Objecting Creditor.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

In Bankruptcy. No. B-16042

In the Matter of GEORGE C. ARENZ, Bankrupt

AMENDED SPECIFICATIONS IN OBJECTION TO DISCHARGE OF BANKRUPT—Filed Jan. 23, 1932

Comes now Fidelity and Deposit Company of Maryland, of Baltimore, State of Maryland, a corporation, and alleges that it is a creditor of the bankrupt, George C. Arenz, having proved and filed, in the above bankrupt estate, its claim against the said bankrupt, in the sum of Ten Thousand
[fol. 34] ($10,000) Dollars, and does hereby oppose the granting to the said bankrupt of a discharge from his debts, and for grounds of such opposition does file the following specifications:

I

That the bankrupt obtained money or property on credit upon a materially false statement in writing made by him to Fidelity and Deposit Company of Maryland for the purpose of obtaining credit from such person. That the said statement so made by the bankrupt was a financial statement made by him on or about the 15th day of May, 1929, as an inducement to secure the execution by the said Fidelity and Deposit Company of Maryland as surety on a bond of the said George C. Arenz running to the State of Oregon in the sum of Seventy-one Thousand Three Hundred Six and 25/100 ($71,306.25) Dollars, and which said statement did induce the execution of the said bond by the said Fidelity and Deposit Company of Maryland on or about the 15th day of May, 1929, which said bond was also executed by the said bankrupt and principal and delivered to the State of Oregon on or about said date.

That by virtue of having executed the said bond for the said bankrupt, the said Fidelity and Deposit Company of Maryland became legally obligated to pay, and did pay, a certain judgment entered against the said bankrupt and the said surety, jointly, in favor of Oregon City Sand and Gravel Company, a corporation, in the sum of Ten Thou-[fol. 35] sand ($10,000.00) Dollars, said judgment being rendered in the Circuit Court of the State of Oregon for the County of Multnomah in cause No. N-7588.

That said statement was false in that the said bankrupt failed to list an indebtedness owed by him to the Oregon Contract Company, the amount of which said indebtedness is unknown to this creditor, or its agent signing this objection and amended specification, but which indebtedness this creditor is informed and believes was in an amount of approximately Ten Thousand ($10,000.00) Dollars. That the said financial statement was further false in that the bankrupt listed as owned by him one hundred twenty-five (125) shares of stock in the Oregon Contract Company of a value of Twelve Thousand Five Hundred ($12,500.00) Dollars, which said stock he therein stated was not pledged for any purpose, while in truth and in fact the said stock was, at said time, pledged to the Oregon Contract Company to secure it for the indebtedness of the bankrupt to the said Oregon Contract Company. That said financial statement

was further false in that said bankrupt therein stated that he had never failed in business, nor compromised with creditors, when in truth and in fact he had, on several occasions, failed in business and voluntarily been adjudicated bankrupt. That said financial statement was further false in that the bankrupt therein stated that he had never defaulted on a contract, when in truth and in fact he had, upon several occasions, defaulted on contracts. That the said [fol. 36] financial statement was further false in that the bankrupt listed as an asset his home located at 693 Siskiyou Street, Portland, Oregon, which he represented had a forced sale value of Thirteen Thousand ($13,000.00) Dollars, when in truth and in fact said home had no greater or further forced sale value than the sum of Nine Thousand ($9,000.00) Dollars.

II

That the bankrupt obtained an extension of credit from the objecting creditor upon a materially false statement in writing made by him to the said creditor for the purpose of obtaining such extension of credit from the said creditor; that the statement so made by the bankrupt was a financial statement made by him on or about the 15th day of May, 1929, as an inducement to secure the execution of the said Fidelity and Deposit Company of Maryland as surety on a bond of the said George C. Arenz running to the State of Oregon in the sum of Seventy-one Thousand Three Hundred Six and 25/100 ($71,306.25) Dollars, and which said statement did induce the execution of the said bond by the said Fidelity and Deposit Company of Maryland on or about the 15th day of May, 1929, which said bond was also executed by the said bankrupt and principal and delivered to the State of Oregon on or about said date.

That by virtue of having executed the said bond for the said bankrupt, the said Fidelity and Deposit Company of Maryland became legally obligated to pay, and did pay, a [fol. 37] certain judgment entered against the said bankrupt and the said surety, jointly in favor of Oregon City Sand and Gravel Company, a corporation, in the sum of Ten Thousand ($10,000.00) Dollars, said judgment being rendered in the Circuit Court of the State of Oregon for the County of Multnomah in cause No. N-7588.

That said statement was false in that the said bankrupt failed to list an indebtedness owed by him to the Oregon Contract Company, the amount of which indebtedness is unknown to this creditor, or its agent signing this objection and amended specification, but which indebtedness this creditor is informed and believes was in an amount of approximately Ten Thousand ($10,000.00) Dollars. That the said financial statement was further false in that the bankrupt listed as owned by him one hundred twenty-five (125) shares of stock in the Oregon Contract Company of a value of Twelve Thousand Five Hundred ($12,500.00) Dollars, which said stock he therein stated was not pledged for any purpose, while in truth and in fact the said stock was, at said time, pledged to the Oregon Contract Company to secure it for the indebtedness of the bankrupt to the said Oregon Contract Company. That said financial statement was further false in that said bankrupt therein stated that he had never failed in business, nor compromised with creditors, when in truth and in fact he had, on several occasions, failed in business and voluntarily been adjudicated bankrupt. That said financial statement was further false [fol. 38] in that the bankrupt therein stated that he had never defaulted on a contract, when in truth and in fact he had, upon several occasions, defaulted on contracts. That the said financial statment was further false in that the bankrupt listed as an asset his home located at 693 Siskiyou Street, Portland, Oregon, which he represented had a forced sale value of Thirteen Thousand ($13,000.00) Dollars, when in truth and in fact said home had no greater or further forced sale value than the sum of Nine Thousand ($9,000.00) Dollars.

III

That the bankrupt has committed an offense punishable by imprisonment, as provided by the Act of July 1st, 1898, Chapter 541, Section 29; Title 11 United States Code, Section 52, in that he made a false oath to schedule "B" of his schedules filed in this proceeding, in that he knowingly and fraudulently omitted to schedule in such schedule "B" 125 shares of the capital stock of Oregon Contract Company, a corporation, which said property was, at the time of the

making of said schedule and at the time said schedule was sworn to, the property of the bankrupt.

Fidelity and Deposit Company of Maryland, Creditor, by R. E. Pinney, Resident Vice President.
John Lichty, Attorney for Creditor. (Seal.)

[fol. 39] *Duly sworn to by R. E. Pinney. Jurat omitted in printing.*

Due service of the foregoing Specifications in Objection to Discharge of Bankrupt accepted in Portland, Oregon, this 23d day of January, 1931.

Lewis, Lewis & Finnegan, Attorneys for Bankrupt.

[File endorsement omitted.]

[fol. 40] IN UNITED STATES DISTRICT COURT

In Bankruptcy. No. B-16042

In the Matter of GEORGE C. ARENZ, Bankrupt

DEMURRER TO SPECIFICATIONS IN OPPOSITION TO DISCHARGE—Filed Jan. 26, 1932

To the Hon. John McNary and James A. Fee, Judges of the United States District Court:

George C. Arenz, the bankrupt herein, appearing by Arthur H. Lewis, his attorney, demurs and excepts to the amended specifications in opposition to his discharge herein filed by the Fidelity & Deposit Company of Baltimore, Maryland, generally upon the ground that the same does not state facts sufficient to constitute a bar to the bankrupt's discharge and demurs and excepts specifically to specifications I, II and II of the Amended objections to his discharge made by the said Fidelity & Deposit Company of Baltimore, Maryland, upon the ground and for the reason that the same does not state facts sufficient to constitute a bar to the said bankrupt's discharge.

Arthur H. Lewis, Attorneys for Bankrupt.

Dated this 26th day of January, 1932.

Due and legal service of the foregoing, by receipt of a duly certified copy thereof, as required by law, is hereby [fol. 41] accepted in Multnomah County, Oregon, on this 26th day of January, 1932.

John Lichty, Attorney for Fidelity & Deposit Co. of Maryland.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

In Bankruptcy. No. B-16042

In the Matter of GEORGE C. ARENZ, Bankrupt

ORDER SUSTAINING DEMURRER TO OBJECTIONS—Filed May 12, 1932

Bankrupt having demurred and excepted to the amended specifications upon objection to the discharge of the bankrupt filed by the Fidelity & Deposit Company of Baltimore, Maryland, in opposition to the bankrupt's discharge and said demurrer and exception having been submitted on briefs, and the court after due consideration having been had thereon,

Ordered that the said demurrer and exceptions to the amended specifications be, and the same is hereby sustained in all respects as to each specification of said amended objections; and it is

Further ordered that order be entered by the Clerk of this Court granting a full discharge of said bankrupt from all debts provable against his estate under said bankrupt act, [fol. 42] except such debts as are excepted by law from such discharge.

James Alger Fee, United States District Judge.

Dated this 12th day of May, 1932.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

In Bankruptcy. No. B-16042

In the Matter of GEORGE C. ARENZ, Bankrupt

DISCHARGE OF BANKRUPT—Filed May 12, 1932

Whereas George C. Arenz, of Portland, in the County of Multnomah, in said District, has been duly adjudged a bankrupt, under the Acts of Congress relating to bankruptcy, and appears to have conformed to all the requirements of law in that behalf,

It is therefore ordered by the Court that said George C. Arenz be discharged from all debts and claims which are made provable by said Acts against his estate, and which existed on the 4th day of May, A. D. 1931, on which day the petition for adjudication was filed by him; excepting such debts as are by law excepted from the operation of a discharge in bankruptcy.

[fol. 43] Witness the Honorable James Alger Fee, Judge of said District Court, and the seal thereof, this 12th day of May, A. D., 1932.

G. H. Marsh, Clerk, by L. S. Rogers, Deputy Clerk.
(Seal.)

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

In Bankruptcy. No. B-16042

In the Matter of GEORGE C. ARENZ, Bankrupt

NOTICE OF EXCEPTIONS—Filed May 21, 1932

To the Honorable James A. Fee, Judge of the United States District Court for the District of Oregon:

Comes now Fidelity and Deposit Company of Maryland, a creditor of the above named bankrupt, and excepts to the order of the court made and entered the 12th day of May, 1932, sustaining the demurrer to the aforementioned creditor's amended specifications in opposition to discharge.

The Fidelity and Deposit Company of Maryland further excepts to the order of the court made and entered the 12th day of May, 1932, allowing the petition of the above bank-
[fol. 44] rupt for a discharge in bankruptcy and granting to the said bankrupt said discharge in bankruptcy.

The foregoing exceptions are made for the reason and upon the ground that the amended specifications in opposition to discharge of the objecting creditor states facts sufficient to constitute a bar to the above named bankrupt's discharge.

Dated this 21st day of May, 1932.

John Lichty, Attorney for Objecting Creditor.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

In Bankruptcy. No. B-16042

In the Matter of GEORGE C. ARENZ, Bankrupt

PETITION FOR APPEAL—Filed June 8, 1932

To the Honorable James A. Fee, District Judge of the United States District Court for the District of Oregon:

The Fidelity and Deposit Company of Maryland, an objecting creditor herein, deeming itself grieved by the final order and decree entered on the 12th day of May, 1932, in [fol. 45] the above proceeding, allowing the petition and application of the above named bankrupt for a discharge in bankruptcy, and granting unto the said bankrupt a discharge in bankruptcy from all his debts,

Does hereby petition for an order allowing an appeal from the said order and decree of the United States Circuit Court of Appeals for the Ninth Circuit, and prays that its appeal may be allowed, and a citation granted, directed to George C. Arenz, the above bankrupt, commanding him to appear before the United States Circuit Court of Appeals for the Ninth Circuit to do and receive what may appertain to justice to be done in the premises, and that a transcript of the records and proceedings duly authenticated may be trans-

mitted to the United States Circuit Court of Appeals for the Ninth Circuit.

In connection with this petition, the petitioner herewith presents his Assignment of Errors.

Fidelity and Deposit Company of Maryland, Objecting Creditor, by R. E. Pinney, Resident Vice-President. John Lichty, Attorney for Objecting Creditor.

[File endorsement omitted.]

[fol. 46] STATE OF OREGON,
County of Multnomah, ss:

Due service of the within Petition is hereby accepted in Multnomah County, Oregon, this 8th day of June, 1932, by receiving a copy thereof, duly certified to as such by John Lichty, attorney for petitioner.

Lewis, Lewis & Finnegan, Attorney for Bankrupt.

IN UNITED STATES DISTRICT COURT

In Bankruptcy. No. B-16042

In the Matter of GEORGE C. ARENZ, Bankrupt

ASSIGNMENTS OF ERROR—Filed June 8, 1932

Now comes Fidelity and Deposit Company of Maryland an objecting creditor herein, and in connection with its petition for appeal files the following Assignments of Error from orders of the court made and entered in the above entitled matter:

Exception No. I

That the court erred in sustaining the demurrer to the specifications of objections to a discharge, filed by the within named objecting creditor on August 21, 1931, said order being made, entered and excepted to on the 18th day of Jan-
[fol. 47] uary, 1932.

Exception No. II

That the court erred in sustaining the demurrer of the bankrupt to the amended specifications in opposition to a

discharge, filed by the objecting creditor herein on the 23rd day of January, 1932, said order being made and entered on the 12th day of May, 1932, and an exception being filed thereto by the objecting creditor.

Exception No. III

That the court erred in allowing the application and petition of the above bankrupt for a discharge in bankruptcy by making and entering an order on May 12th, 1932, granting and allowing the above bankrupt a discharge in bankruptcy, by reason whereof the appellant prays that said decrees and orders of the District Court be reversed, and the matter remanded with directions to proceed in accordance with the law.

John Lichty, Attorney for Petitioner.

Filed June 8, 1932. G. H. Marsh, Clerk.

State of Oregon,
County of Multnomah, ss:

Due service of the within Assignments of Error is hereby accepted in Multnomah County, Oregon, this 8th day of June, 1932, by receiving a copy thereof, duly certified to [fol. 48] as such by John Lichty, attorney for petitioner.

Lewis, Lewis & Finnegan, Attorneys for Bankrupt.

In United States District Court

In Bankruptcy. No. B-16042

In the Matter of George C. Arenz, Bankrupt

Order Allowing Appeal—Filed June 8, 1932

A petition having heretofore been filed by the Fidelity and Deposit Company of Maryland, an objecting creditor herein, for leave to appeal from a certain order the District Court made and entered on the 12th day of May, 1932, in the above entitled proceeding, and upon consideration thereof,

It is hereby ordered that said petition be and hereby is allowed and granted.

James Alger Fee, Judge.

[File endorsement omitted.]

[fols. 49 & 50] Bond on appeal for $250.00, approved and filed June 10, 1932, omitted in printing.

[fol. 51] Citation, in usual form, showing service on Lewis, Lewis & Finnegan, filed June 13, 1932, omitted in printing.

[fol. 52] IN UNITED STATES DISTRICT COURT

In Bankruptcy. No. B-16042

In the Matter of GEORGE C. ARENZ, Bankrupt

STIPULATION AS TO RECORD ON APPEAL—Filed June 28, 1932

Whereas, in the above entitled proceeding, the objecting creditor, Fidelity and Deposit Company of Maryland, did, on the 8th day of June, 1932, duly file in the District Court [fol. 53] of the United States for the District of Oregon, a petition for appeal, an assignment of errors and a citation, which said appeal was duly allowed by order of the District Court upon said date,

Now therefore, it is hereby stipulated and agreed by and between Lewis, Lewis & Finnegan, attorneys for the bankrupt, and John Lichty, attorney for the objecting creditor, that the record to be certified to the United States Circuit Court of Appeals for the Ninth Circuit by George H. Marsh, clerk of the United States District Court, for the District of Oregon, on said appeal, shall consist of the following:

1. The debtor's petition and schedule,

2. Order of Adjudication and Reference dated May 4, 1931,

3. Proof of claim of Fidelity and Deposit Company of Maryland, dated May 26th, 1931,

4. Bankrupt's petition for a discharge, dated July 18th, 1931,

5. Specification of Objections of the Fidelity and Deposit Company of Maryland to a discharge of the bankrupt, filed August 21st, 1931,

6. Demurrer to specifications of objections to a discharge,

7. Order of the court dated December 14, 1931, reciting that arguments on demurrer had been had and matter taken under advisement,

[fol. 54] 8. Order sustaining demurrer of bankrupt, dated January 18th, 1932,

9. Amended specifications in opposition to a discharge filed by objecting creditor,

10. General demurrer to amended specifications in opposition to discharge,

11. Order sustaining demurrer made and entered May 12th, 1932,

12. Order of discharge dated May 12th, 1932,

13. Notice of exception dated May 21st, 1932,

14. Petition for allowance of appeal,

15. Assignments of error,

16. Order allowing Appeal,

17. Bond on Appeal,

18. Citation on Appeal.

Dated this 27th day of June, 1932.

Lewis, Lewis & Finnegan, Attorneys for Bankrupt.
John Lichty, Attorney for Objecting Creditor.

[File endorsement omitted.]

CLERK'S CERTIFICATE TO TRANSCRIPT OF RECORD.

United States of America,
District of Oregon.—ss.

I, G. H. Marsh, Clerk of the District Court of the United States for the District of Oregon, do hereby certify that the foregoing printed pages, numbered from 1 to 54 inclusive, constitute the transcript of record upon the appeal, in a case in said Court in the Matter of George C. Arenz, Bankrupt, in which Fidelity and Deposit Company of Maryland, a Corporation, is appellant, and George C. Arenz is appellee, in accordance with the praecipe of appellant filed in said cause; that I have compared the foregoing transcript with the original record in said cause and that the foregoing transcript, as corrected by me, is a full, true and correct transcript of the said record and proceedings had in said Court in said cause, as the same appear of record and on file at my office and in my custody;

And I further certify that the fee for comparing and certifying the within transcript is $5.90 and that the same has been paid by the appellant.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court in Portland in said District, this 16th day of July, 1932.

[Seal] G. H. MARSH,
Clerk.

United States
Circuit Court of Appeals
For the Ninth Circuit

In the Matter of
GEORGE C. ARENZ,
Bankrupt.

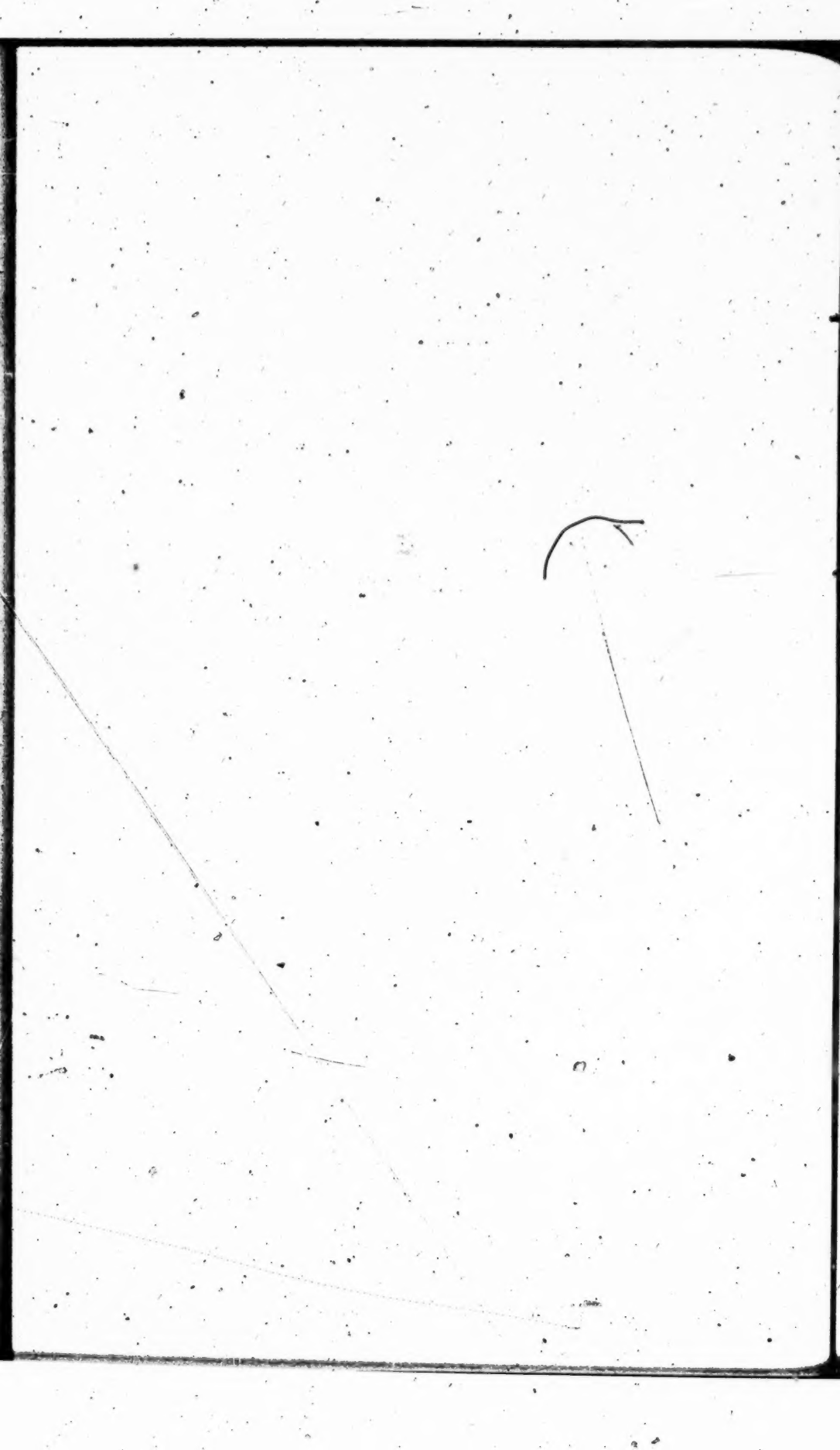
FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a Corporation,
Appellants,

vs.

GEORGE C. ARENZ,
Appellee.

Upon Appeal from the District Court of the United States for the District of Oregon.

PROCEEDINGS HAD IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.



At a stated term, to wit: the September term A. D. 1932 of the United States Circuit Court of Appeals for the Ninth Circuit, held at the Court-Room, in the City of Portland, in the State of Oregon, on Thursday the fifteenth day of September in the year of our Lord one thousand, nine hundred and thirty-two.

Present: Honorable CURTIS D. WILBUR, Senior Circuit Judge, Presiding; Honorable WILLIAM H. SAWTELLE, Circuit Judge; Honorable JEREMIAH NETERER, District Judge.

[Title of Cause.]

ORDER OF SUBMISSION.

ORDERED above cause argued by Mr. John Lichty, counsel for the appellant, and by Mr. A. H. Lewis, counsel for the appellee, and submitted to the Court for consideration and decision.

At a stated term, to wit, the October Term, A. D. 1932 of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Monday, the seventh day of November, in the year of our Lord one thousand nine hundred and thirty-two.

Present: Honorable CURTIS D. WILBUR, Senior Circuit Judge, Presiding; Honorable WILLIAM H. SAWTELLE, Circuit Judge.

[Title of Cause.]

ORDER DIRECTING FILING OF OPINION AND FILING AND RECORDING OF JUDGMENT.

By direction of the Court, ORDERED that the typewritten opinion this day rendered by this Court in above cause be forthwith filed by the clerk and that a judgment be filed and recorded in the minutes of this Court in accordance with the opinion.

[Title of Court and Cause.]

OPINION OF THE UNITED STATES CIRCUIT COURT OF APPEALS.

Upon Appeal from the District Court of the United States for the District of Oregon.

Before: WILBUR and SAWTELLE, Circuit Judges, and NETERER, District Judge.

WILBUR, Circuit Judge.—The Fidelity and Deposit Company of Maryland, engaged in the business, among other things, of furnishing surety bonds to contractors, objected to the discharge in bankruptcy of George C. Arenz, a contractor, for whom they had executed a surety bond for the sum of $71,306.25 on May 15, 1929, for the performance of a contract with the State of Oregon for the improvement of highways. This objection was based upon the ground that the bankrupt procured the execution of said surety bond by certain written

false statements concerning his financial standing made by him to the appellant to induce, and which did induce, the execution thereof; and that the appellant was compelled to pay, and did pay, a judgment of $10,000 in an action brought upon said bond by the Oregon City Sand and Gravel Company. The bankrupt demurred to the sufficiency of the objections, thus admitting the truth of the allegations. The demurrer was sustained, and the discharge granted, from which order the Surety Company takes this appeal. The question thus presented is whether or not under these circumstances the bankrupt "obtained money or property on credit, or obtained an extension or renewal of credit" within the meaning of the bankruptcy act regulating discharge. (11 U. S. C. A., § 32 (b), sub. 3; c. 406 § 6, 44 Stat. 663.) The appellee relies upon a decision of Judge Rudkin in In re Tanner, 192 Fed. 572, decided November 4, 1911, in the District Court of the Western District of Washington. This decision was to the effect that the word "property" used in the above cited section before the amendment of 1910 was so restricted by the context that while the word "property" in its comprehensive sense included such a bond, as used in the bankruptcy act relating to "discharge" it did not. Judge Rudkin stated his conclusion as follows:

> "The term, however, is not always used in this comprehensive sense in constitutional and statutory provisions, and it is manifest that it was not so used here. By the insertion of

> the words 'money or' before the word 'property' in the amendment of 1910, Congress manifestly doubted whether the term 'property' as used in the amendment of 1903 was comprehensive enough to include money; and, if it did not include money, most assuredly it did not include a contract or obligation such as this."

The Supreme Court, in 1914, in Gleason v. Shaw, 236 U. S. 538, had occasion to consider the meaning of the word "property" as used in the section of the Bankruptcy Act now under consideration. Speaking through Justice McReynolds the Court said:

> "The accurate delimitation of the concept property would afford a theme especially apposite for amplification philosophic disquisition; but the bankrupt law is a prosy thing intended for ready application to the everyday affairs of practical business, and when construing its terms we are constrained by their usual acceptation in that field of endeavor. The word property, without restriction, occurs more than seventy times in the act. Not once does it plainly refer to professional services, and except in a very few instances, to include them within its intendment would produce a patent absurdity. * * *
>
> Congress, we think, never intended that property in the paragraph under consideration should include professional services. At most it denotes something subject to ownership,

> transfer or exclusive possession and enjoyment, which may be brought within the dominion and control of a court through some recognized process. This is certainly the full extent of the word's meaning as employed in ordinary speech and business and the same significance attaches to it in many carefully prepared writings. The constitutions of many states provide that all property shall be taxed, but it has never been supposed that this applies to professional services."

This view of the Supreme Court tends to support the conclusion of Judge Rudkin that a surety bond is not property within the meaning of the section of the Bankruptcy Act under consideration. A substitution of the words "surety bond" for professional services" in the foregoing quotation illustrates the aptness of the quotation to the case at bar.

Judge Neterer, sitting in the same Court as Judge Rudkin, in September, 1926, in In re Ford, 14 F. (2d) 848, followed the decision of Judge Rudkin above quoted as to the meaning of the word property as used in 11 U. S. C. A. § 32 (b), sub. 3, supra, of the Bankruptcy Act. He also decided that the obtaining of such a surety bond was not an obtaining of an extension or renewal of credit within the meaning of that section as amended in May, 1926. (44 Stat. 663.)

The appellant claims that Judge Rudkin in In re Tanner, supra, overlooked the fact that the Su-

preme Court, as early as May, 1901, had held that the word "property" as used in the Bankruptcy Act relating to preferential transfers included "money." (Pirie v. Chicago Title and Trust Co., 182 U. S. 438.) The District Court for the Western District of Kentucky, in June, 1907, decided that the term "property" used in § 32 (b) sub. 3 of the Bankruptcy Act, supra, did not include "money." In re Pfaffinger Louisville Nat. Bkg. Co., 154 Fed. 528. However, this decision was reversed by the Circuit Court of Appeals of the Sixth Circuit January 16, 1908. In re Louisville Nat. Banking Co., 158 Fed. 403. Thus, before 1910 it had been held by the Circuit Courts of Appeals for the Sixth and Fourth (Samet v. Farmers Bank, 247 Fed. 669) Circuits that the word "property" as used in § 32-b (3) included "money," but Congress evidently concluded to settle all doubt upon the matter by adding the word "money" to the word "property." If this legislative history is at all significant in the interpretation of the present law, it would at least seem to indicate that Congress was of opinion that the word "property" used in the amendment of 1903 (c. 487, § 4-b (3), 32 Stat. 797) was not used in its all-inclusive sense, just as Judge Rudkin held.

In view of the rule that the Bankruptcy Act concerning discharge is to be liberally construed in favor of the debtor (In re Jacobs, 241 Fed. 620; Feder v. Goetz, 264 Fed. 619; In re Reisler, 278 Fed. 618; In re Braus, 248 Fed. 55; In re Cooper, 26 Fed. (2d) 585; In re Lee, 51 F. (2d) 394), we

concur in the conclusions reached by Judges Rudkin and Neterer in the cases above cited. It should be said, however, that the Court of Appeals of New York has held that where the fraudulent procurement of a surety bond is followed by the payment of money on the bond, that the money thus paid is obtained by false pretenses within the meaning of the Bankruptcy Act. In re Dunfee, 219 N. Y. 188, 114 N. E. 52. With reference to the meaning of § 17 sub. (2) of the Bankruptcy Act which provided that "liabilities for obtaining property by false pretenses or false representations" are not released by the discharge in bankruptcy, the Court of Appeals of New York in In re Dunfee, supra, in a carefully considered opinion, speaking through Justice Cuddeback, said:

> "Obtaining the bond by false representations and paying the obligee the amount of the loss should be regarded as all one transaction, which amounted to obtaining money by false representations within the Bankrupt Law. The Bankrupt Law does not require that the property shall be obtained by the bankrupt at the instant of making the false representations, nor that it shall pass directly to the bankrupt. In criminal cases the rule relating to the crime of obtaining property by false representations is the same. Commonwealth v. Harkins, 128 Mass. 85; 9 Halsbury's Laws of England, 698. The parties in the case under consideration intended at the time the false representations

were made that the bonding company should assume a contract of suretyship in Dunfee's behalf, and they must have had in contemplation all the results that naturally follow from such a contract. So when the surety company paid the loss to the obligee in fulfillment of its obligation, the law implied that the payment was at the request of Dunfee, and this implication arose from the contract of suretyship itself. As was said in Garr v. Martin, 20 N. Y. 306, 309: 'Where one person advances money for another, in payment of the debt of the latter, it is deemed at the instant of its payment, to be the money of the party for whose benefit the payment is made; so that in the eye of the law the debt is satisfied, not by the money of a third party, but by that of the debtor himself.' "

This decision of the New York Court is not cited by the parties nor is it argued that the section of the Bankruptcy Act applies to money thus paid, as distinguished from the bond itself. A similar view is taken by the Court of Civil Appeals in Gaddy v. Will, 142 S. W. 926. It is true as stated in the opinion of the Court of Appeals of New York that "The Bankruptcy Law does not require that the property shall be obtained by the bankrupt at the instant of making the false representations nor that it shall pass directly to the bankrupt," but where there are intervening causes between the representations and the payment, not necessarily contem-

plated at the time of the representations, such as unanticipated difficulties in the execution of the contract covered by the surety bond, it is doubted, whether the money paid on account of such losses is so immediately or proximately the result of the false pretenses as to constitute the prohibited offense. We have been unable to find any decision, civil or criminal, other than those cited, that has gone so far as to hold that money paid on a bond was obtained by fraud, if the bond was so procured. In the case cited by the Court of Appeals of New York, Commonwealth v. Harkins, 128 Mass. 85, supra, it was held by a divided Court that where a judgment for damages against a city was obtained by fraudulent representations as to the fact of injury, that obtaining of the payment to satisfy the judgment was not the obtaining of property by false pretenses, although of course the direct object of the false representations was to obtain the money. In the case at bar it must be presumed in favor of innocence and good sense that the contractor did not plan or expect to lose money on the job he had undertaken.

We conclude that the money paid by the Surety Company was not obtained by the false pretenses as to the bankrupt's financial standing which induced the execution of the bond within the meaning of the Bankruptcy Act.

The Circuit Court of Appeals for the Fourth Circuit approached from a different angle the problem of a surety bond obtained by the fraud of the bank-

rupt in Royal Indemnity Co. v. Cooper, 26 F. (2d) 585. In that case the surety bond was obtained by the bankrupt, W. B. Cooper, to secure deposits of the State of North Carolina in the Commercial National Bank of Wilmington, North Carolina, of which the bankrupt was a director. The bond was secured by the bankrupt's false statements of his financial condition at the time the bond was obtained. The bankrupt failed and $25,000 was recovered on the bond. The Court stated as follows:

> "We cannot agree that the reasoning in the two cases, In re Tanner, D. C., 192 Fed. 572, and In re Ford, 14 F. (2d) 848, relied upon by the appellee is controlling here. The bankrupt had given his personal bond to secure the deposit of state funds in the bank, and had deposited collateral for the same purpose, and in securing the bond from the appellant, if he did not obtain money or property on credit, he did at least obtain an extension of credit for the bank. If he was sufficiently interested in the bank to bring him within the rule of the Levy Case, Levy v. Industrial Finance Corp., 276 U. S. 281, 48 S. Ct. 298, then the effect was the same as if he had obtained the extension of credit for himself."

While the opinion is pointed and brief, it is clear that the case was decided on the theory that the bank owed the state money which it could only retain by giving a bond. This clearly involved an extension of credit to the bank by the state, for, in

the absence of such a bond, the state would have withdrawn its deposits. An extension of credit is defined in Corpus Juris as follows:

> "In commercial law an indulgence, giving time to pay a debt, or perform an obligation; the allowance on the part of the creditor to a debtor of further time to pay a debt; the granting of further time in which to do something which has been set down for a particular day; a postponement by agreement of the parties of the time set for acting."

We conclude that the opinion of the Circuit Court of Appeals for the Fourth Circuit is not in conflict with our view that the procurement of a surety bond by false pretenses is not per se an obtaining of property by false pretenses; indeed, that Court distinguished the facts of the case presented to it in Royal Indemnity Co. v. Cooper, from the facts presented to Judges Rudkin and Neterer in the two cases which we have cited (In re Tanner, supra, In re Ford, supra) and propose to follow.

Order affirmed.

[Endorsed]: Opinion. Filed November 7, 1932. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 6865.

FIDELITY AND DEPOSIT COMPANY OF MARYLAND,

Appellant,

vs.

GEORGE C. ARENZ,

Appellee.

JUDGMENT.

Upon appeal from the District Court of the United States for the District of Oregon.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Oregon, and was duly submitted:

On consideration whereof, it is now here ordered and adjudged by this Court that the order of the said District Court in this cause be, and hereby is affirmed, with costs in favor of the appellee and against the appellant.

IT IS FURTHER ORDERED AND ADJUDGED by this Court that the appellee recover against the appellant for his costs herein expended, and have execution therefor.

[Endorsed]: Judgment. Filed and entered November 7, 1932. Paul P. O'Brien, Clerk.

[Title of Court and Cause.]

ORDER STAYING ISSUANCE OF MANDATE.

Upon application of Mr. John Lichty, counsel for the appellant, and good cause therefor appearing, IT IS ORDERED that the issuance, under Rule 32, of the mandate of this Court in the above cause be, and hereby is stayed to and including January 9, 1933; and in the event the petition for a writ of certiorari to be made by the appellant herein be docketed in the Clerk's office of the Supreme Court of the United States on or before said date, then the mandate of this Court is to be stayed until after the said Supreme Court passes upon the said petition.

CURTIS D. WILBUR,
United States Circuit Judge.

Dated, San Francisco, California,
December 6, 1932.

[Title of Court and Cause.]

APPLICATION FOR STAY OF ISSUANCE OF MANDATE.

Comes now the appellant, the Fidelity and Deposit Company of Maryland, a corporation, and respectfully petitions the Court for an order staying the issuance of the mandate entered herein.

This application is made for the purpose of applying to the Supreme Court of the United States

to obtain a writ of certiorari from the Supreme Court of the United States in the above entitled case.

JOHN LICHTY,
ROBERT D. CLAPPERTON,
Attorneys for Petitioner.

I, John Lichty, one of the attorneys for appellant, do hereby certify that the above petition is, in my opinion, well founded and is not interposed for the purpose of delay.

JOHN LICHTY.

[Endorsed]: Filed December 6, 1932. Paul P. O'Brien, Clerk.

[Title of Court and Cause.]

CERTIFICATE OF CLERK U. S. CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT TO RECORD CERTIFIED UNDER RULE 38 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES.

I, PAUL P. O'BRIEN, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing seventy-two (72) pages, numbered from and including 1 to and including 72, to be a full, true and correct copy of the entire record of the above entitled case in the said Circuit Court of Appeals, made pursuant to request of counsel for the appellant, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 22nd day of December, A. D. 1932.

[Seal] PAUL P. O'BRIEN,
Clerk.

[fol. 74] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 6865

FIDELITY & DEPOSIT COMPANY OF MARYLAND, a Corporation, Appellant,

vs.

GEORGE C. ARENZ, Appellee

ORDER STAYING ISSUANCE OF MANDATE—Filed Jan. 3, 1933

Upon application of Mr. John Lichty, counsel for the appellant, and good cause therefor appearing, it is ordered that the issuance, under Rule 32, of the mandate of this Court in the above cause be, and hereby is stayed to and including January 16, 1933; and in the event the petition for a writ of certiorari to be made by the appellant herein be docketed in the Clerk's office of the Supreme Court of the United States on or before said date, then the mandate of this Court is to be stayed until after the said Supreme Court passes upon the said petition.

Curtis D. Wilbur, United States Circuit Judge.

Dated San Francisco, California, January 3, 1933.

[File endorsement omitted.]

A true copy. Attest January 3, 1933.
Paul P. O'Brien, Clerk. (Seal United States Circuit Court of Appeals, Ninth Circuit.)

[fol. 75] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed March 4, 1933

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which ac-

companied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 37,323. U. S. Circuit Court of Appeals, Ninth Circuit. Term No. 626. Fidelity and Deposit Company of Maryland, petitioner, vs. George C. Arenz. Petition for a writ of certiorari and exhibit thereto. Filed January 14, 1933. File No. 37,323.

FILE COPY

In the Supreme Court of the United States

OCTOBER TERM, 1932

No. [redacted] 1

FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a corporation,

Petitioner,

vs.

GEORGE C. ARENZ,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT — BRIEF IN SUPPORT THEREOF.

ELTON WATKINS,
JOHN [illegible]CHTY,
ROBERT [illegible]LAPPERTON,
Failing Building, Portland, Oregon,
Counsel for Petitioner.

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In the Supreme Court of the United States

OCTOBER TERM, 1932

No.....

FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a corporation,

Petitioner,

vs.

GEORGE C. ARENZ,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT and BRIEF IN SUPPORT THEREOF.

TO the Honorable The Supreme Court of the United States:

Comes now the Fidelity and Deposit Company of Maryland, a corporation, and petitions this Honorable Court for review on Writ of Certiorari of the decision of the United States Circuit Court of Appeals for the Ninth Circuit in the above entitled proceedings and respectfully shows the Court:

STATEMENT OF MATTER INVOLVED.

The sole matter submitted for determination in this proceeding is whether or not the obtaining by a bankrupt, prior to bankruptcy, of a surety bond in a fixed penal sum guaranteeing the faithful performance by the bankrupt of a contract then entered into by him with the obligee named in the bond, which said bond is obtained by him by virtue of a materially false statement in writing respecting his financial condition, is a bar to his discharge in bankruptcy and constitutes "obtaining money or property on credit, or obtaining an extension or renewal of credit, by making or publishing, or causing to be made or published, in any manner whatsoever, a materially false statement in writing respecting his financial condition," where the surety, pursuant to the transaction, suffers a loss of $10,000.00.

REASONS FOR ALLOWANCE OF WRIT

Your petitioner relies upon the following reasons for the allowance of this writ, and submits that the Circuit Court of Appeals for the Ninth Circuit has,

I.

Rendered a decision in conflict with the decision of another Circuit Court of Appeals on the same matter.

II.

Decided an important question of Federal Law which has not been, but should be, settled by this

Court.

III.

Decided a Federal question in a way probably in conflict with applicable decisions of this Court.

WHEREFORE, your petitioner respectfully prays that a Writ of Certiorari be issued out of and under the Seal of this Honorable Court directed to the Circuit Court of Appeals for the Ninth Circuit, commanding that court to certify and to send to this Court, for its review and determination, on a date certain to be therein named, a full and complete transcript of the record and all proceedings in the case, numbered and entitled on its docket No. 6865, in the Matter of George C. Arenz, Bankrupt, Fidelity and Deposit Company of Maryland, a corporation, Appellant, vs. George C. Arenz, Appellee, and that the said judgment and decree of the said Circuit Court of Appeals for the Ninth Circuit may be reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your petitioner will ever pray.

Fidelity and Deposit Company of Maryland,

ELTON WATKINS,
JOHN LICHTY,
ROBERT CLAPPERTON,
Counsel for Petitioner.

BRIEF IN SUPPORT OF PETITION

I.

THE OPINION OF THE COURT BELOW.

The opinion of the Circuit Court of Appeals is reported in the Federal Reporter Advance Sheet for December 26, 1932, Fidelity and Deposit Company of Maryland, a corporation, vs. George C. Arenz, 61 Fed. (2d) 607, and has been printed in the record filed herein. (R. 10).

II.

JURISDICTION.

1. The jurisdiction of the Supreme Court of the United States is invoked under Section 240 of the Judicial Code, as amended by the Act of February 13, 1925, 43 Stats. 938.

The date of the judgment to be reviewed is November 7, 1932. (R. 70).

III.

STATEMENT OF THE CASE.

On the 4th day of May, 1931, the respondent, George C. Arenz, filed, in the District Court of the United States for the District of Oregon, a petition praying that he be adjudged a bankrupt, and on the said date he was, by the said Court, duly and regularly adjudged bankrupt.

On the 10th day of July, 1931, your petitioner filed in the Bankruptcy Proceedings its proof of claim of an

indebtedness of the bankrupt to your petitioner of $10,000.00. (R. 22).

Upon the 20th day of July, 1931, the bankrupt filed his petition for discharge. (R. 20).

On the 21st day of August, 1931, your petitioner filed Specifications and Objections to the discharge of the Bankrupt. (R. 26).

The bankrupt demurred to the Specifications so filed (R. 30), and on the 18th day of January, 1932, the Judge of the District Court signed an order sustaining the demurrer and giving your petitioner 5 days to file Amended Specifications (R. 32).

The Amended Specifications (R. 33 to 39) contained allegations of the following facts:

That on or about the 15th day of May, 1929, the bankrupt made a false financial statement in writing as an inducement to secure the execution by your petitioner of a surety bond, with the bankrupt as principal, running to the State of Oregon, in the sum of $71,306.25, and that the statement did induce the execution of such bond, which bond was delivered to the State of Oregon, guaranteeing the performance by the bankrupt of a certain contract with the State of Oregon; that by virtue of having executed the said bond for the said bankrupt, the Fidelity and Deposit Company of Maryland became legally obligated to pay, and did pay, a certain judgment entered against the bankrupt and surety jointly, in favor of the Oregon City Sand and Gravel Company, a corporation, in the sum of $10,000.00; that the financial statement

furnished to your petitioner by the bankrupt was materially false, setting out in the Specifications the particulars in which it was false.

As a second Specification your petitioner alleged that the bankrupt had obtained an extension of credit from it upon a materially false statement in writing made by him, to-wit; for the purpose of obtaining such extension of credit, the financial statement being referred to being the same financial statement referred to in the first Specification and showing the same facts as alleged in support of the first specification.

The bankruptcy interposed a demurrer to the amended Specifications (R. 40), and the District Court sustained such demurrer and ordered that the bankrupt be discharged, pursuant to the provisions of the United States Bankruptcy Act. (R. 41 and 42).

An appeal was perfected to the Circuit Court of Appeals for the Ninth Circuit; the appeal was argued and submitted, and, in an opinion filed November 7, 1932, the Circuit Court of Appeals affirmed the judgment and decree of the District Court. (R. 60 to 69).

Pursuant to that opinion, judgment of the Circuit Court of Appeals was entered affirming the judgment of the District Court. (R. 70).

IV.

ARGUMENT.

Summary of the Argument.

Point A. The Circuit Court of Appeals for the Ninth Circuit has, by its decision below, erroneously

decided an important question of Federal Law which has not been, but should be, settled by this Court.

Point B. The decision below is in conflict with a prior decision of a Circuit Court of Appeals of another Circuit.

Point C. The Court below has decided a Federal question in a way probably in conflict with applicable decisions of this Court.

POINT A.

Important question of Federal Law which has not been, but should be, settled by this Court.

The Federal Statute, interpretation of which is sought by this proceeding, is the Act of July 1st, 1898, Chapter 541, Section 14, 30 Stat. 550, as amended by the Act of May 27, 1926, Chapter 406, Section 6, 44 Stat. 663, Title 11, United States Code, Section 32, the pertinent part of which reads as follows:

> "(a) Any person may, after the expiration of one month and within twelve months, subsequent to being adjudged a bankrupt, file an application for a discharge in the Court of Bankruptcy in which the proceedings are pending, if it shall be made to appear to the judge that the bankrupt was unavoidably prevented from filing it within such time, it may be filed within, but not after, expiration of the next six months.
>
> "(b) The judge shall hear the application for a discharge and such proofs and pleas as may be made in opposition thereto by the trustee or other

parties in interest, at such time as will give the trustee or parties in interest a reasonable opportunity to be heard; and investigate the merits of the application and discharge the applicant, unless he has * * *, (3) obtained money or property on credit, or obtained an extension or renewal of credit, by making or publishing, or causing to be made or published, in any manner whatsoever, a materially false statement in writing respecting his financial condition;"

We are asking that the Court interpret this statute in such a manner that it will deny to a bankrupt the benefit of a discharge, where the bankrupt has obtained a surety bond by virtue of a materially false financial statement in writing and has caused the surety a monetary loss by virtue of having executed the bond, relying upon the truthfulness of the financial statement.

The business of corporate suretyship has, within the past few years, assumed an important place in the business and commercial life of this country. Suretyship obligations totaling hundreds of millions of dollars are annually undertaken by the surety companies.

When an application is made to a surety company for a bond or undertaking, the first question which presents itself is the financial responsibility of the principal who is requesting the bond.

Just as a bank, in loaning its money, needs an accurate statement of its borrowers' financial condition, so the surety company, in selling its credit, must first

know the extent of the ability of its principal to respond in the event of loss under the bond.

If a bankrupt has obtained credit in the purchase of an automobile, or any other chattel, by virtue of a materially false financial statement, the decisions are uniform that, under the above quoted statute, discharge will be refused to him.

It will indeed result in an anomalous situation if the same man can, with impunity, falsify a financial statement by which he obtains a surety bond, obligating the surety to pay thousands of dollars, under which the surety actually loses $10,000.00, and then obtain a discharge in bankruptcy on the grounds that he has not obtained money or property on credit.

Your petitioner does not believe that that is the law, but that is the result of the holding of the Court below, and we feel that the matter is of sufficient importance to be settled by this Court.

POINT B.

CONFICT WITH PRIOR FEDERAL DECISIONS

On June 12, 1928, the Circuit Court of Appeals for the Fourth Circuit decided the case of Royal Indemnity Co. vs. Cooper, 26 Fed. (2d) 585, and the major part of that decision reads as follows:

> "This is an appeal from a decree entered on December 23, 1927, in the District Court of the United States for the Eastern District of North Carolina, granting a discharge to W. B. Cooper, appellee.

There were two grounds of objections to the bankrupt's discharge filed by the appellant, Royal Indemnity Company—the first being that, in obtaining from the said Indemnity Company a bond to secure deposits of the State of North Carolina in the Commercial National Bank of Wilmington, N. C., the bankrupt filed with aplant a statement of his financial condition on January 1, 1922, which statement was untrue and materially false, and that, upon failure of the bank, a recovery of more than $25,000. had been had upon the bond; the second ground of objection being that the bankrupt, subsequent to the filing of his petition in bankruptcy, transferred, removed, destroyed, and concealed his property with intent to hinder, delay and defraud his creditors.

In sustaining the demurrer to the first specification, the court below cited as authority the case of In re Ford (D. C.) 14 F. (2d) 848, and held that the obtaining of a bond, even by giving an admittedly false statement, did not constitute, under the Bankruptcy Act (11USCA), a bar to bankrupt's discharge. Attorneys for appellee also rely upon In re Tanner (D. C.) 192 F. 572.

The application for the discharge was passed upon after the passage of the amendment of 1926 to the Bankruptcy Act, section 6 of which amendment reads as follows:

'(3) * * * Obtained money or property on

credit, or obtained an extension or renewal of credit, by making or publishing, in any manner whatsoever, a materially false statement in writing respecting his financial condition.' 11 USCA Sec. 32 (b), (3).

* * * *

We therefore conclude that, under the pleadings in this case, the trial judge erred in sustaining the demurrer.

(3) It is contended on behalf of the bankrupt that the bond was not obtained for himself, but for the bank in which he was a director, and that, therefore, the first specification in opposition to the discharge was not sufficient to bring the objection within the purview of the statute. In the case of Levy v. Industrial Finance Corporation et al, 48 S. Ct. 298, 72 L. Ed. ** (decided March 5, 1928), Mr. Justice Holmes says:

'A man obtains his end equally when that end to induce another to lend to his friend and when it is to bring about a loan to himself. It seems to us that it would be a natural use of ordinary English to say that he obtained the money for his friend. So when the statute speaks simply of obtaining money, the question for whom the money must be obtained depends upon the context and the policy of the act.'

(4) It is not necessary to quote authority to the effect that the statute must be construed strictly as against the objector, and liberally in favor of the bankrupt, yet such rule of construc-

tion should not be so applied as to deprive the words of the statute of their common and accepted meaning. To do so would be to carry the reason of the rule to an absurd length.

We cannot agree that the reasoning in the two cases relied upon by appellee is controlling here. The bankrupt had given his personal bond to secure the deposit of state funds in the bank, and had deposited collateral for the same purpose, and in securing the bond from the appellant, if he did not obtain money or property on credit, he did at least obtain an extension of credit for the bank. If he was sufficiently interested in the bank to bring him within the rule of the Levy case, then the effect was the same as if he had obtained the extension of credit for himself. In the light of the amendment to the Bankruptcy Act of 1926, and the decision of the Supreme Court in the Levy Case, we are forced to the conclusion that the court erred in sustaining the demurrer to the first specification."

The two cases which the Circuit Court of Appeals for the Fourth Circuit refused to follow, in re Tanner, 192 Fed. 572, in re Ford, 14 Fed. (2d) 848, are both decisions of the United States District Court for the Western District of Washington, and are approved by the Circuit Court of Appeals for the Ninth Circuit in its decision in this case below.

In in re Tanner, Supra, Judge Rudkin based his decision upon the ground that the bankrupt, in ob-

taining the surety bond, did not obtain money or property from the surety, coupled with the further fact that it was not obtained on credit, because, says he:

> "The relation of debtor and creditor did not exist after the bond was obtained any more than before."

In in re Ford, Judge Neterer, in following the lead of Judge Rudkin, elaborates a little more fully on the two propositions, and likewise arrives at the conclusion that the act of the bankrupt, in obtaining the surety bond, did not result in his obtaining money or property and did not create the relation of debtor and creditor between the surety company and the bankrupt.

We believe that the Circuit Court of Appeals for the Ninth Circuit recognized the complete fallacy of the argument that the relation of debtor and creditor did not exist between the surety and the bankrupt and, in its opinion the Circuit Court of Appeals does not discuss that question.

In Swarts vs. Siegel, 117 Fed. 13, Judge Sanborn makes the following observation;

> "The accepted and customary definition of the term 'creditor', its definition in the Act of 1898, the clear terms and patent meaning of the provisions of that Act upon the subject under discussion, the better reasons and the greater weight of authority all converge to establish and sustain the conclusion that an endorser, an accommodation maker, or a surety for the bankrupt is his

creditors. The law is well settled that a surety or endorser is a creditor within the meaning of the word 'creditor' as used in the Bankruptcy Act."

Stern v. Paper (D. C. N. D.) 1910, 183 F. 228, 231.

Kobusch v. Hand, (Mo. 1907) 156 F. 660, 84 C. C. A. 372.

Swarts v. Fourth Nat'l. Bank (Mo. 1902) 117 F, 1, 54 C. C. A. 387.

National Bank of Newport v. National Herkimer County Bank (N. Y. 1902) 225 U. S. 178, 32 S. Ct. 633, 56 L. Ed. 1042.

Landry v. Andrews (1901) 22 R. I. 597, 48 A 1036.

Bartholow v. Bean, (Mo. 1874) 18 Wall 635, 21 L. Ed. 866.

Cohen v. Golden (Mass. 1918) 250 F. 599, 162 C. C. A. 615.

Crandall v. Coats (1905) 133 Fed. 967, 13 Am. Bankr. Rep. 712.

Re Hurst (1911) 188 Fed. 707, affirmed in (1912) 114 C. C. A. 534, 194 Fed. 830, rehearing granted in Washington v. Tearney (1912) 115 C. C. A. 672, 196 Fed. 1007.

Huntington v. Baskerville (1911) 113 C. C. A. 137, 192 Fed. 813.

Smith vs. Tostevin, (1917) 159 C. C. A. 320, 247 Fed. 102.

Your petitioner submits that the reasoning of the judges in holding that the obtaining of a surety bond is not the obtaining of property is just as faulty as

it was in reaching the conclusion that the surety was not a creditor of its principal on the bond.

The term "property" is comprehensive rather than restrictive and, by its nature, has a large and inclusive scope. At the center of its compass are grouped the readily discernible items of property; as the periphery of its reach is approached, it is less easy to ascertain which subjects fall within or without its limits. The determination of the matters within its province is necessarily a process of relative classification.

In the case of Louisville National Banking Company vs. Pfaffinger, 158 Fed. 402, the Circuit Court of Appeals for the Sixth Circuit said concerning this subject:

> "If we were to apply the rule laid down by Mr. Justice Hunt and take the common ordinary meaning of the word "property," we think we would reach the usual definition given to the word; that is, anything of value, anything that may be owned or possessed, anything which has debt-paying or debt-securing power."

In Samet vs. Farmers and Merchants National Bank of Baltimore, 247 Fed. 669, the Circuit Court of Appeals for the Fourth Circuit says:

> "A note is property because of the value of the contract which it represents. The transfer of a note four months before bankruptcy is a preference under Section 67-E of the Statute. Property is a term of very broad significance, embracing everything that has exchangeable value or goes

> to make up a man's wealth—every interest or estate which the law regards of sufficient value for judicial recognition. So the business world understands it and so the courts should regard it without drawing technical distinctions in the application of the Bankruptcy Statute. * * * It is true that when a note is surrendered at maturity and a new note taken merely as a renewal, the debt is not paid, nevertheless the old note and the renewal are two different pieces of property because they represent two different contracts. One represents a contract with the valuable quality of the right of immediate enforcement; the other represents a contract without that right."

To the same effect are the following cases from the Circuit Court of Appeals for the Eighth and Tenth Circuits:

> Morton vs. Snider, 20 Fed. (2d) 469.
> Erickson vs. Bicknell, 20 Fed. (2d) 729.
> Parrish vs. The City Nat'l. Bank, 32 Fed. (2d) 982.
> Mullen vs. First Nat'l. Bank of Ardmore, 57 Fed. (2d) 711.

The Circuit Court of Appeals for the Ninth Circuit, by its decision below, has constricted the definition of the word "property" within a much shorter radius than did the Circuit Court of Appeals of any Circuit and far beyond any definition of the word as laid down by this Court.

We feel that the law is now well settled that a

promissory note would come within the classification of the word "property" as used in the section of the Bankruptcy Act under consideration.

If this be true, wherein lies any logical distinction between that and a surety bond. A promissory note is an absolute promise to pay money upon a day certain; a surety bond is an absolute promise to pay money to the obligee named in the bond, such promise to become void upon the performance by the principal of the act of defeasance named in the bond.

The surety in this case, the petitioner, most certainly felt that it had parted with property when it signed its obligation to pay $71,000.00 and delivered it to the State of Oregon, and its feeling was confirmed when it was forced to pay the sum of $10,000.00 as a direct result of having executed the bond.

A discharge in bankruptcy is a privilege, an act of grace, and, as one Circuit Court of Appeals has said; in re Bleyer, 215 Fed. 896:

> "Where it clearly appears that the bankrupt has obtained personal pecuniary benefit from false statements, whether regarding his own property or the property of someone else, he does that which prevents him from securing a discharge."

Although the Circuit Court of Appeals for the Ninth Circuit has, in this case, attempted to distinguish its decision from that of the Circuit Court of Appeals of the Fourth Circuit, in Royal Indemnity Company vs. Cooper, Supra, a proper consideration of the matter

will convince the court that they are not distinguishable. The only distinguishing fact is that in the case in the Fourth Circuit, the bankrupt was a personal surety on the same obligation, and by giving the false financial statement to the surety induced the surety to become bound in his place and stead.

Much is said about "extension or renewal of credit," but there was no more an extension or renewal of credit in that case than in the case at bar.

Then too, as far as appears, the financial statement was given to the surety, and the only credit extended by the surety in either of the two cases, that is the case at bar or the case from the Fourth Circuit, was a credit extended in the bond.

The only other element of credit is the credit between the state and the bank, which existed in the Royal Indemnity Company case, but that credit was not extended by virtue of the false statement; that credit was extended by virtue of adequate security.

In order to bring the giving of such a statement within this section of the Bankruptcy Act, it must have been intentionally and knowingly false, coupled with the intention **to deceive the creditor who relies on the statement.**

Gilpin vs. Merchants National Bank, 165 Fed. 607-611; 91 C. C. A. 445.

20 L. R. A. (New Series) 1023.

Firestone vs. Harvey, 174 Fed. 574 C. C. A. (Ohio).

In re Lundberg, 272 Fed. 107, C. C. A. (Ill.).

POINT C.

Probable Conflict with Applicable Decision of this Court.

The Supreme Court of the United States has, in two cases, given us the benefit of its interpretation of the proper definition of the word "property," as used in the Bankruptcy Act and the decision of the Circuit Court of Appeals for the Ninth Circuit below, conflicts with the interpretion placed by the Supreme Court upon the same subject.

> In re Pirie vs. Chicago Title & Trust Company, 182 U. S. 437, 45 Law Ed. 1171.
>
> Gleason vs. Thaw, 236 U. S. 558, 59 Law Ed. 717.

In the first of these cases decided, before the amendment of the Bankruptcy Act, adding the word "money," Mr. Justice McKenna, in speaking for the Court, states:

> "It seems necessarily to mean that a transfer of property includes the giving or conveying of anything of value; anything which has debt-paying or debt-securing power."

In the second of these two cases Mr. Justice McReynolds, in speaking for the court, says of the word "property":

> "At most it denotes something subject to ownership, transfer or exclusive possession and enjoyment which may be brought within the dom-

inion and control of a court through some recognized process."

Either of these two definitions is sufficiently broad to include within its scope the bond which was obtained by the bankrupt in this case, and the money which the surety paid under the terms of that bond.

CONCLUSION.

It is therefore respectfully submitted that this case is one calling for the exercise, by this Court, of its supervisory powers in order that an important question of bankruptcy law, which has not been, but should be, be settled by this Court; that the apparent conflict between the decisions of the various Circuit Courts of Appeal on the same matter be cleared, and that, to such an end, a Writ of Certiorari should be granted, and this Court should review the decision of the Circuit Court of Appeals of the Ninth Circuit and finally reverse it.

ELTON WATKINS,
JOHN LICHTY,
ROBERT CLAPPERTON,
Counsel for Petitioner.

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NO. 626

In the Supreme Court of the United States

October Term, 1932

IN THE MATTER OF
GEORGE C. ARENZ, Bankrupt,

FIDELITY AND DEPOSIT COMPANY
OF MARYLAND, a corporation, Appellant,

vs.

GEORGE C. ARENZ, Appellee.

Brief for Appellee

Upon Appeal from the United States Circuit Court of Appeals for the Ninth Circuit

STATEMENT

It is claimed by appellant that George C. Arenz, the bankrupt, made a material false statement in writing for the purpose of obtaining from appellant the execution of

a surety bond and that by reason of this false statement the bankrupt should be denied his discharge in bankruptcy.

The history of this case discloses:

In May of 1929, the bankrupt entered into a contract with the State of Oregon for certain highway work. The Oregon Laws, Section 49-701 and Section 67-1101, Oregon Laws, 1930, provide that all contractors on public work shall give the usual penal bond with the additional obligation that they shall promptly make payments to all persons supplying them with labor or materials used in the prosecution of the work called for by such contract.

In compliance with the requirements of these sections, George C. Arenz, as principal, and the Fidelity and Deposit Company of Maryland, as surety, executed and delivered to the State of Oregon a bond in the penal sum of $71,306.25, conditioned that George C. Arenz, the contractor, would complete his contract and pay for all labor and material that entered into the prosecution of the work called for by the contract.

Shortly after completion of the contracted work, George C. Arenz, the bankrupt, was sued by one of the sub-contractors and judgment obtained in the sum of $10,000.00. The Fidelity and Deposit Company of Maryland paid this judgment and took an assignment thereof.

As assignee of the judgment, appellant filed its claim in the Arenz bankruptcy proceedings and made objection to discharge of the bankrupt, alleging three grounds or specifications therefor as follows:

(1) The bankrupt obtained money or property on credit upon a material false statement in writing.

(2) The bankrupt obtained an extension of credit from the objecting creditor upon a material false statement in writing; and

(3) The bankrupt committed an offense punishable by imprisonment as provided by the bankruptcy act.

Appellant's grounds for Objections 1 and 2 are found in Chapter III., Section 32, Title XI-U. S. Code (Amendment of 1926), the material part of which, in substance, provides a bankrupt shall be denied a discharge where he has:

> "Obtained *money* or *property* on credit or obtained an extension or renewal of credit by making or publishing or causing to be made or published, in any manner whatsoever, a materially false statement in writing respecting his financial condition."

Appellant's third objection: The bankrupt committed an offense punishable by imprisonment, is found in subdivision 1 of Section 32, Title XI., U. S. Code and subdivision 2 of Paragraph B of Section 52, Title XI., U. S. Code. This last Section is:

> "Made a false oath or account in, or in relation to, any proceeding in bankruptcy."

To these objections made and filed by the surety company, the bankrupt demurred on the ground that the

specifications therefor did not constitute sufficient cause to deny his discharge.

This demurrer was sustained by the District Court of Oregon, and on appeal to the Circuit Court of Appeals, Ninth Judicial District, was affirmed. Fidelity and Deposit Company vs. George C. Arenz, 61 Fed. (2nd) 607.

By this demurrer and for the purpose of the hearing, the bankrupt is obliged to admit the truth of the allegations of Fidelity and Deposit Company of Maryland that he obtained this bond by reason of a false written statement concerning his financial standing and which statement did induce the execution of the bond.

POINTS AND AUTHORITIES, FIRST OBJECTION

The obtaining of a surety or indemnity bond by a bankrupt by means of a material false statement is not the obtaining of property or money on credit within the meaning of the bankruptcy act, which bars a discharge.

Re Tanner, 192 Fed. 572.
Re Oliner, 262 Fed. 737 (CCA).
Re Ford, 14 Fed. (2nd) 848.
Fidelity & Deposit Co. vs. Arenz, 61 Fed. (2nd) 607.

POINTS AND AUTHORITIES, SECOND OBJECTION

"Extension"—"In commercial law an indulgence, giving time to pay a debt, or perform an obligation; the allowance on the part of a creditor to a debtor of further time

to pay a debt; the granting of further time in which to do something which has been set down for a particular day; a postponement by agreement of the parties of the time set for acting."

25 C. J., page 227.

"Renewal"—"In commercial and legal parlance the term means a continuance of an old obligation or the re-establishment of a particular contract for another period of time; revival or rehabilitation of an expiring subject. While renewal has been construed as equivalent to or synonymous with extension, it has also been distinguished from extension and has been held that a renewal as distinguished from mere extension is a separate and distinct contract, the substitution of a new right or obligation for another of the same nature."

54 C. J., page 380.

ARGUMENT ON FIRST AND SECOND OBJECTIONS

The one question presented is whether of not one who has secured the execution of a surety bond by reason of a false written financial statement has "obtained money or property on credit or obtained an extension or renewal of credit" within the meaning of the bankruptcy act regulating discharges.

As disclosed by the record of this case, the facts giving rise to the objections to discharge and which for the purpose of this consideration must be admitted as true, are:

The bankrupt obtained from the objecting creditor the execution of a bond in the sum of $71,306.25, running to the State of Oregon, with the objector as surety thereon, conditioned for the faithful performance of the bankrupt's contract, and the payment of labor and material entering into the prosecution of the work called for by said contract.

This bond was obtained by a written financial statement made by the bankrupt to the creditor, which statement was materially false in several particulars and that, the creditor relying upon the statement, executed the bond and became a surety thereon.

In support of its objections, appellant argues that a surety bond is both a loan of credit and a sale of credit and also property.

Under the bankrupt act a sale of credit or a loan of credit, if there was such a thing accomplished by the transactions between the bankrupt and the Surety Company, is immaterial for the reason the act does not embrace such transactions.

To hold such intangible things as a loan of credit or a sale of credit is within the act, is to enlarge the terms thereof beyond the plain intention of Congress, the law-making body of our system of government.

Appellant, to prevail, must convince the court that the bond is either money, property or an extension or renewal of credit. The bond must be one of these things.

This bond is not money and no such suggestion is made by appellant. The basis of appellant's objections is the

obtaining of the bond and not the payment of the money upon the bond. The distinction between money paid on a bond and the obtaining of the bond is sufficiently covered by the Circuit Court of Appeals in the Fidelity and Deposit Company vs. Arenz case to justify the submission of this contention without further argument. Suffice it to say that appellant itself is not sufficiently impressed with this idea to urge the same in its brief.

The next step is whether the obtaining of the bond was an extension or renewal of credit.

A brief consideration of the definition of the words "extension " and "renewal" as given in 25 C. J. 227 and 54 C. J. 380 is a sufficient answer to the suggestion that this bond might be an extension or a renewal of credit.

The facts disclosed by the entire proceedings (bankrupt's petition, schedule, objections) show only the procuring and execution of an original surety bond. Nowhere was there any enlargement of any time for the bankrupt to do or perform any particular act. In this particular case, there is nothing which will support the objection that an extension or renewal of credit was given.

Appellant and appellee are both of the same opinion that there is only one issue; is a surety bond property within the meaning of the bankruptcy act, and, if it is, was it obtained on credit.

It is evident that appellant takes and appreciates this position, for it attempts to liken itself to a merchant. It endeavors to apply to the services it sells, the same characteristics as ordinary merchandise.

Appellant desires the bond treated and considered for the purposes of this case as an article of merchandise.

On page nine of appellant's brief is found this:

> "If a bankrupt has obtained credit in the purchase of an automobile, or any other chattel, by virtue of a materially false financial statement, the decisions are uniform that, under the above quoted statute, discharge will be refused to him."

No quarrel is had with appellant's contention or authorities that a surety is a creditor in contemplation of the bankruptcy act, and that the relation of debtor and creditor exists between a surety and its principal.

These propositions of law, the supporting authorities, and appellant's definition of property, do not concern or touch the consideration of the point of law here involved.

Appellant is in the business of selling surety bonds upon graduated prices, called a premium, based on the penalties of the bond.

In accordance with its usual practice and business, appellant on application of the bankrupt sold the bankrupt a bond for which it charged and received its regular premium or price.

It readily appears that the financial statement had nothing to do with appellant's granting a credit to the bankrupt for the price of the bond, but had to do only with the surety company assuming certain obligations or liabilities. The bond itself, as distinguished from the obliga-

tion, was sold to the contractor without reliance upon the financial statement.

As no question is made as to premium payment or that a credit was given therefor it may be fairly urged that the purchase price of the bond was paid and that obligation satisfied.

Under appellant's authorities, that property is anything which has a debt paying or debt securing power, the financial statement objected to was not relied upon or used to pay the purchase price of the bond or to secure a credit therefor, but only to induce the surety to become a guarantor of the bankrupt's obligation to the State of Oregon..

Is this liability property? The surety company in this case assumed the relation of a guarantor. It entered into a collateral undertaking guaranteeing the obligation of the bankrupt, agreeing to pay the resulting damages if the principal failed to perform. (28 C. J. 887).

The Company assumed a future contingent liability. There was nothing tangible until default was made by the principal and payment by the guarantor.

Without doubt in using the word "property" Congress had in mind such property or rights as are capable of manual delivery or of assignment. In this case there was nothing capable of transfer or assignment, merely an inchoate, contingent chose in action.

This contract was made in the State of Oregon and would be governed by the laws of this State. In the case

of Hillman vs. Shannahan, 4 Ore. 164, at Page 170, the Oregon Supreme Court holds that a right of action dependent upon a breach of covenant cannot be assigned prior to the happening of the breach of covenant. That until the happening of a breach of a condition the interest of the owner of the chose in action is a mere possibility or contingency not assignable at law.

A mere inchoate contingent chose in action is not money or property within the purview of the bankruptcy statute.

The only Federal case that Counsel for bankrupt is able to find that is anywhere contrary to the holding of the cases cited is Royal Indemnity Co. vs. Cooper, 26 Fed. (2nd) 585.

In this case the surety company indemnified the State of North Carolina for deposits made in the Commercial National Bank of Wilmington, N. C. The bankrupt was one of the principal officers of the bank. He obtained on behalf of the bank the bond in question by giving collateral and making a statement of his financial worth. The case cites the case of Re Ford, 14 Fed. (2nd), and concludes with this:

> "We cannot agree that the reasoning in the two cases here relied upon by appellee is controlling here. The bankrupt had given his personal bond to secure the deposit of state funds in the bank, and had deposited collateral for the same purpose, and in securing the bond from the appellant, if he *did not*

obtain money or property on credit, he did at least obtain an extension of credit for the bank."

We cannot follow the reasoning of the Circuit Court of Appeals of the Fourth District. If the bankrupt did not obtain money or property on credit, we do not see how he, on the other hand, obtained an extension of credit. Our view is that an extension of credit is an indulgence to one's debtor. The bankrupt did not in this North Carolina case receive an extension of credit from the indemnity company. If anyone gave an extension of credit it would be the State of North Carolina.

This decision strikes the appellee as thongh the Court was dissatisfied with the law as enacted and, without proper consideration, decided that it would not be limited by the plain wording of a statute. It possibly allowed its idea of right and wrong to outweigh and overcome the law as written.

The mere fact that the obligation assumed is possibly valuable does not make it property within the terms of the bankrupt act.

In Gleason vs. Shaw, 236 U. S. 538, and also in Re Thaw, 180 Federal 419, affirmed 180 Fed. 417 (CCA 3rd) it is held that the services and fees of an attorney are not property within the provisions of the bankrupt law, giving grounds to refuse the discharge for obtaining property under false representations.

It is hoped that the Court will agree with us that the services and fees of an attorney are something of value. The point made, by reference to this case is, that the mere

fact that something of value is given or flows to one party or another does not make it property within the meaning of this section of the bankrupt act.

The mere fact that the objection is based upon the grounds of false statements or misrepresentations will not prevent the operation of a discharge unless the bankrupt has obtained that which is property on credit. If he has paid for the property, the fact that false statements have been made is not material. In every consideration whether the right received is property or not, the question arises whether or not the party entitled thereto has a right of disposition over the same.

Under the law of the State where the contract was made, the surety company had nothing which it could dispose of, until default and payment. Therefore the liability assumed was not property.

What was undertaken by the appellant surety company was a contingent obligation to pay, which would not have been assumed, financial statement or no financial statement, if it had contemplated a loss was to be suffered by the contractor on his work.

ARGUMENT ON THIRD OBJECTION

Objection No. 3—Committed an offense punishable by imprisonment:

In consideration of this objection the petition and schedules filed are treated the same as pleadings.

An examination of the bankrupt's petition and schedules show: Schedule "A," list of secured creditors, Oregon

Construction Co., $12,500.00, secured by the pledge of 124 shares of the Oregon Construction Co.

Through inadvertance this stock which was shown pledged to secure a debt and which had a par value of $100, with an actual value to about $20.00, was not listed in the Schedule "B" of assets. This is the basis of the surety company's third objection.

The objecting creditor did not appear or examine the bankrupt. This mistake more than likely would have appeared in this examination, and had it been raised the Schedule could have readily been amended.

Bankrupt submits that the third objection is not sufficient for the reason:

1. He would not be subject to prosecution for perjury.

2. It affirmatively appears that there was no intent to conceal.

3. The property is without value to the estate.

4. The bankrupt had no property or equity in these shares.

False oath means such as would subject the affiant to a persecution for perjury.

Re Gilpin, 160 F. 171.

Intent is a material element.

Re Hale, 206 F. 858.

If appeared and examined, all facts in connection with transaction would have been disclosed.

Re Servel, 30 F. (2) 102.

The making by a voluntary bankrupt of oath to his schedules in which it was stated that he had no property when in fact he had a small amount of money ($55) with which he paid the costs and a small amount of household furniture which he could claim as exempt, held not sufficient to constitute the offense of knowingly and fraudulently making a false oath.

Humphries vs. Nalley (CCA-5); 296 F. 607.

Where the item omitted was of a very doubtful value or where the bankrupt's title to it was doubtful in law, there has not been a false oath by failure to include it in the schedule.

Re Shoemaker, Fed. Case No. 12799.

Generally: The bankrupt act should be construed liberally in favor of the bankrupt and strictly against the objector.

Re Cooper, 26 Fed. (2nd) 585.

Re Lee, 51 Fed. (2nd) 394-395.

Bankrupt submits that his demurrer to the amended objections for the reason that the specifications of the objections are not under the bankrupt law sufficient to justify the court in refusing or denying the bankrupt's discharge is properly taken.

Respectfully submitted,

JOHN C. VEATCH and
ARTHUR H. LEWIS,
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LEWIS, LEWIS & FINNIGAN,
Attorneys for Bankrupt.

SUPREME COURT OF THE UNITED STATES.

No. 1.—October Term, 1933.

Fidelity and Deposit Company of Maryland, Petitioner,
vs.
George C. Arenz.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

[November 6, 1933.]

Mr. Justice Butler delivered the opinion of the Court.

In 1929 respondent, for the purpose of procuring a contract with Oregon for highway construction and in compliance with applicable statutes (§§ 49-701 and 67-1101, Oregon Code, 1930), gave to the State a bond on which petitioner was surety conditioned that he would pay for labor and material entering into the work. He failed, and one who had furnished him labor and material sued on the bond and obtained a judgment for $10,000 against principal and surety jointly. Petitioner paid and took an assignment of the judgment. In 1931 respondent, having been adjudged bankrupt, applied for discharge from his debts including that due petitioner on account of such payment. Petitioner filed objections showing that respondent induced it to become surety by means of materially false written statements in respect of his financial condition. Respondent demurred, the district court sustained the demurrer and entered a decree of discharge. The Circuit Court of Appeals affirmed (61 F. (2d) 607) following decisions of district courts in that circuit (*In re Tanner*, 192 Fed. 572, and *In re Ford*, 14 F. (2d) 848).

The Bankruptcy Act, § 14 as amended, 11 U. S. C., § 32 (b) (3), requires denial of discharge if the bankrupt "obtained money or property on credit . . . by making . . . a materially false statement in writing respecting his financial condition". Petitioner's obligation was given in behalf of respondent and inured to his benefit. It was a means by which he procured the contract and was security for the payment of his indebtedness

incurred for labor or material required to do the work. But respondent insists that the bond is not property and that his fraud in obtaining it is not within the condemnation of clause (3). "Property" is a word of very broad meaning and when used without qualification, expressly made or plainly implied, it reasonably may be construed to include obligations, rights and other intangibles as well as physical things. *Delassus* v. *United States*, 9 Pet. 117, 133. *Pritchard* v. *Norton*, 106 U. S. 124, 132. *Bryan* v. *Kennett*, 113 U. S. 179, 192. *Pirie* v. *Chicago Title and Trust Company*, 182 U. S. 438, 443. *Farmers Loan Co.* v. *Minnesota*, 280 U. S. 204. *In re Louisville Nat. Banking Co.*, 158 Fed. 403. *Samet* v. *Farmers' & Merchants' Nat. Bank*, 247 Fed. 669. *Royal Indemnity Co.* v. *Cooper*, 26 F. (2d) 585, 587. *Matter of Dunfee*, 219 N. Y. 188. *Dunlap* v. *Tol., A. A. & G. T. Ry.*, 50 Mich. 470, 474. *Cincinnati* v. *Hafer*, 49 Ohio 60, 65. *Dillingham* v. *Insurance Co.*, 120 Tenn. 302, 315. For the meaning rightly here to be given the word, regard is to be had to the statute and connection in which it is found *Nashville Ry.* v. *Tennessee*, 262 U. S. 318, 323. *Wells, Fargo & Co.* v. *Mayor, etc., of Jersey City*, 207 Fed. 871, 876. The Act, while making discharge of bankrupts the general rule, conditions the grant upon adherence by every applicant to the standards of honesty and fair dealing in business transactions that are required or reflected in § 32 (b) (1), (2), (3), (4), (6), (7). The fraud perpetrated by respondent is of the kind condemned. Giving effect to the rule that legislative intent controls, it is plain that "property" includes petitioner's obligation according to the terms of the bond to pay respondent's debts. *Matter of Dunfee, supra. Gaddy* v. *Witt* (Tex. Civ. App.) 142 S. W. 926. *Royal Indemnity Co.* v. *Cooper, supra.* In *Gleason* v. *Thaw*, 236 U. S. 558, this court held that the professional services of an attorney were not within § 17 (2) which excepts from the general discharge liabilities for property obtained by false pretenses. That was a close case. See 185 Fed. 345, 196 Fed. 359. The principle of construction there applied may not reasonably be extended to this one.

It remains to be considered whether the respondent obtained petitioner's obligation "on credit". Principal and surety must be held to have had in contemplation all liabilities that naturally might arise from such a contract. *Matter of Dunfee, supra.* Re-

spondent was bound by agreement, implied by law if not expressly made, that he would make good to petitioner whatever the latter as such surety might be required to pay. Petitioner gave its obligation, not for the premium alone, but also in consideration of respondent's promise to reimburse it. Having regard to the results that at the beginning the parties were reasonably bound to anticipate, it is clear that respondent obtained, and petitioner gave, the bond and obligation on credit. See *Swarts* v. *Siegel*, 117 Fed. 13, 17. *Kobusch* v. *Hand*, 156 Fed. 660, 662. While clause (3) seems aimed particularly at false pretenses made by borrowers and purchasers to obtain money or goods on credit (*Firestone* v. *Harvey*, 174 Fed. 574, 577), it is not limited to such transactions. Respondent's application for discharge should have been denied.

Reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.